IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 331 to 389 include **ARC 7421A** to **ARC 7455A**

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
Filed, Brucellosis—designated animals, 64.47(8) **ARC 7453A** 377

ALL AGENCIES
Schedule for rule making 320
Publication procedures 321
Agency identification numbers 328

CITATION OF ADMINISTRATIVE RULES 327

CORRECTIONS DEPARTMENT[201]
Objection, Inmate telephone commissions, 20.20 390
Notice, Incarceration fees, 20.10 **ARC 7452A** 331
Notice, Inmate telephone commissions, 20.20 **ARC 7451A** 331
Filed Emergency, Incarceration fees, 20.10 **ARC 7455A** 365

DENTAL EXAMINERS BOARD[650]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Notice, Continuing education, 25.7 **ARC 7442A** 332
Notice, Deep sedation/general anesthesia, parenteral conscious sedation and nitrous oxide inhalation analgesia, 29.1 to 29.6, 29.8 to 29.12 **ARC 7440A** 332
Notice, Disciplinary hearing panels; reexamination after suspension, 51.4(1), 51.12(7) **ARC 7441A** 335

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
Notice, Local housing assistance program, ch 28 **ARC 7437A** 335
Notice, Governmental enterprise fund, ch 42 **ARC 7436A** 338
Notice, Rural innovation grants, 49.3 **ARC 7435A** 339
Notice, Community economic betterment, 53.2, 53.6(1), 53.7(2), 53.8, 53.9(4), 53.13(3) **ARC 7439A** 340
Notice, Entrepreneurs with disabilities, 56.2, 56.6(1) **ARC 7433A** 342
Notice, Export trade assistance, 68.7, 68.8 **ARC 7434A** 342
Filed, Industrial new jobs training program, 5.1 to 5.4, 5.10, 5.12 **ARC 7438A** 377

EDUCATIONAL EXAMINERS BOARD[282]
EDUCATION DEPARTMENT[281]"umbrella"
Notice Terminated, Complaints and reports, 11.3 to 11.5 **ARC 7447A** 343

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]
Professional Licensing and Regulation Division[193]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Cooperative work experience, 1.4(2)"d" **ARC 7430A** 378

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Notice, Animal feeding operations, amendments to ch 65 **ARC 7454A** 343

HUMAN SERVICES DEPARTMENT[441]
Notice, Support establishment and adjustment services—paternity, 99.27 **ARC 7423A** 348
Notice, Rehabilitative treatment and supportive services (RTSS), 152.21 to 152.23, 185.101, 185.108, 185.112 **ARC 7424A** 349

INSPECTIONS AND APPEALS DEPARTMENT[481]
Notice, Health care facilities—dependent adult abuse and criminal history record checks, 57.12(3), 58.11(2), 59.13(3), 62.9(5), 63.11(3), 64.34, 65.9(5) **ARC 7448A** 354
Filed, Hospitals—pharmaceutical services, 51.14 **ARC 7431A** 379
Filed Emergency, Health care facilities—dependent adult abuse and criminal history record checks, 57.12(3), 58.11(2), 59.13(3), 62.9(5), 63.11(3), 64.34, 65.9(5) **ARC 7449A** 365

Continued on page 319

PREFACE

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

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

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

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

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

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INSPECTIONS AND APPEALS DEPARTMENT[481](Cont'd)
Filed Emergency, Food stamp program, 71.5, 71.6 **ARC 7432A** 366

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Securities, 50.3 to 50.6, 50.14, 50.24(3), 50.34, 50.51 **ARC 7427A** 380

LAW ENFORCEMENT ACADEMY[501]
Filed, Decertification, 6.2(2)"d" **ARC 7425A** 381

OBJECTIONS
Corrections Department[201]
Inmate telephone commissions, 20.20 390
Secretary of State[721]
City and county election ordinances, 21.30, 21.31 390

PUBLIC FUNDS—AVAILABILITY
Public Health Department[641]
Behavioral risk factor surveillance system 330

PUBLIC HEALTH DEPARTMENT[641]
Public Funds Availability 330

PUBLIC HEARINGS
Summarized list 322

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Notice, Gaming officials; board duties; discipline; penalties; license application, 4.3 to 4.34, 20.14(1), 25.11(2), 25.16 to 25.18 **ARC 7443A** 355

REVENUE AND FINANCE DEPARTMENT[701]
Notice, Iowa individual income tax law, 39.6, 40.9, 40.48, 40.51, 41.12, 43.4, 43.8 **ARC 7445A** 356
Notice, Determination of net income, 40.2, 40.3, 40.32, 40.52, 53.5, 53.6 **ARC 7446A** 359
Filed, Vehicles subject to long-term lease, 31.5, 32.11(2) **ARC 7444A** 382

SECRETARY OF STATE[721]
Objection, City and county election ordinances, 21.30, 21.31 390

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"
Filed Emergency After Notice, Soil erosion control, 10.41 **ARC 7426A** 367

SUPREME COURT
Decisions summarized 391

TRANSPORTATION DEPARTMENT[761]
Notice and Notice Terminated, Persons with disabilities parking permits, ch 411 **ARC 7422A** 363
Filed Emergency After Notice, Highway and bridge construction, 125.1 to 125.3 **ARC 7421A** 368
Filed, Driver's privacy protection—certificates of title and vehicle registration, ch 415 **ARC 7429A** 386
Filed, Driver's privacy protection—drivers' licenses and nonoperators' identification cards, ch 611 **ARC 7428A** 387

USURY
Notice 364

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Filed, Universal service—schools and libraries, 38.8 **ARC 7450A** 388

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
6	**Friday, August 22, 1997**	**September 10, 1997**
7	**Friday, September 5, 1997**	**September 24, 1997**
8	**Friday, September 19, 1997**	**October 8, 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:

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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
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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.

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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
CORRECTIONS DEPARTMENT[201]		
Incarceration fees, 20.10 IAB 8/13/97 **ARC 7452A** (See also **ARC 7455A** herein)	Conference Room 523 E. 12th St. Des Moines, Iowa	September 2, 1997 1 to 3 p.m.
Inmate telephone commissions, 20.20 IAB 8/13/97 **ARC 7451A**	Conference Room 523 E. 12th St. Des Moines, Iowa	September 2, 1997 9 to 11 a.m.
DENTAL EXAMINERS BOARD[650]		
Continuing education, 25.7 IAB 8/13/97 **ARC 7442A**	Conference Room—2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	September 17, 1997 1 p.m.
General anesthesia, parenteral sedation and nitrous oxide inhalation analgesia, 29.1 to 29.6, 29.8 to 29.12 IAB 8/13/97 **ARC 7440A**	Conference Room—2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	September 17, 1997 2 p.m.
Disciplinary hearing panels; reexamination after suspension, 51.4(1), 51.12(7) IAB 8/13/97 **ARC 7441A**	Conference Room—2nd Floor Executive Hills West 1209 E. Court Ave. Des Moines, Iowa	September 17, 1997 1:30 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Local housing assistance program, ch 28 IAB 8/13/97 **ARC 7437A**	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	September 2, 1997 2 p.m.
Governmental enterprise fund, ch 42 IAB 8/13/97 **ARC 7436A**	Northeast Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 2, 1997 10 to 11 a.m.
Rural innovation grants—population guideline, 49.3 IAB 8/13/97 **ARC 7435A**	Northeast Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	September 2, 1997 11 a.m. to 12 noon
Community economic betterment program, 53.2, 53.6(1), 53.7(2), 53.8, 53.9(4), 53.13(3)"a"(2) IAB 8/13/97 **ARC 7439A**	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	September 3, 1997 10 a.m.
Entrepreneurs with disabilities—reduction in grant awards, 56.2, 56.6(1) IAB 8/13/97 **ARC 7433A**	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	September 5, 1997 1 p.m.

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

Export trade assistance program, 68.7, 68.8 IAB 8/13/97 **ARC 7434A**	Business Finance Conference Room First Floor 200 E. Grand Ave. Des Moines, Iowa	September 2, 1997 10:30 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Animal feeding operations, amendments to ch 65 IAB 8/13/97 **ARC 7454A**	Oelwein Community Center 25 W. Charles St. Oelwein, Iowa	September 2, 1997 7 p.m.
	Conference Room Super 8 Motel 119 Westview Dr. (Hwy. 1 North) Washington, Iowa	September 3, 1997 7 p.m.
	Meeting Room American State Bank 1000 Jeffreys Dr. Osceola, Iowa	September 4, 1997 7 p.m.
	Community Center Auditorium 530 W. Bluff St. Cherokee, Iowa	September 8, 1997 7 p.m.
	Downstairs Meeting Room First National Bank 211 First Ave. N.W. Hampton, Iowa	September 9, 1997 7 p.m.
	Elks Club 501 Poplar St. Atlantic, Iowa	September 11, 1997 7 p.m.

HUMAN SERVICES DEPARTMENT[441]

Rehabilitative treatment and supportive services program, 108.7(13), 114.2, 114.7, 152.2(23), 156.7(2), 182.5(5), 185.9 to 185.11 IAB 7/30/97 **ARC 7404A**	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	August 20, 1997 1 p.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	August 20, 1997 1 p.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	August 20, 1997 11 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	August 22, 1997 10 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	August 22, 1997 2:30 p.m.
	Conference Room 2 120 E. Main Ottumwa, Iowa	August 20, 1997 1 p.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	August 20, 1997 1 p.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	August 20, 1997 3:30 p.m.
Rates for rehabilitative treatment and supportive services (RTSS), 152.21 to 152.23, 185.101, 185.108, 185.112 IAB 8/13/97 **ARC 7424A**	Conference Room—1st Floor Hoover State Office Bldg. Des Moines, Iowa	September 3, 1997 9 a.m.
INSPECTIONS AND APPEALS DEPARTMENT[481]		
Health care facility employees—dependent adult abuse and criminal history checks, 57.12(3), 58.11(3), 59.13(3), 62.9(5), 63.11(3), 64.34, 65.9(5) IAB 8/13/97 **ARC 7448A** (See also **ARC 7449A** herein)	Director's Conference Room Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	September 2, 1997 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
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.
PAROLE BOARD[205]		
Probation revocation; appeal of decisions, chs 12, 15 IAB 7/30/97 **ARC 7401A** (See also **ARC 7402A**)	Conference Room Capitol Annex 523 E. 12th St. Des Moines, Iowa	August 20, 1997 1 p.m.
PUBLIC HEALTH DEPARTMENT[641]		
WIC program, 73.8(3) to 73.8(5), 73.9, 73.10(1), 73.19(2) IAB 7/30/97 **ARC 7414A**	Conference Room—3rd Floor Lucas State Office Bldg. Des Moines, Iowa	August 19, 1997 1 to 3 p.m.

RACING AND GAMING COMMISSION[491]

Gaming officials; board duties; discipline; penalties; riverboat operation, 4.3 to 4.34, 20.14(1), 25.11(2), 25.16 to 25.18 IAB 8/13/97 **ARC 7443A**	Suite B 717 E. Court Ave. Des Moines, Iowa	September 2, 1997 9 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Dial-up access from remote locations, 14.1(2), ch 16 IAB 7/30/97 **ARC 7407A** **(ICN Network)**	STARC Armory Camp Dodge NW 78th Ave. Johnston, Iowa	August 27, 1997 9 a.m.
	Algona Armory ICN Classroom 1511 N. POW Camp Rd. Algona, Iowa	August 27, 1997 9 a.m.
	Boone Armory ICN Classroom 700 Snedden Dr. Boone, Iowa	August 27, 1997 9 a.m.
	Burlington Armory ICN Classroom 2500 Summer St. Burlington, Iowa	August 27, 1997 9 a.m.
	Cedar Rapids Armory Classroom 4 10400 18 St. S.W. Cedar Rapids, Iowa	August 27, 1997 9 a.m.
	Centerville Armory ICN Classroom RR 1, Box 125B (1 mile east of Hwy. 5 on Dewey Rd.) Centerville, Iowa	August 27, 1997 9 a.m.
	Charles City Armory ICN Classroom 2003 Clark St. Charles City, Iowa	August 27, 1997 9 a.m.
	Corning Armory Room 111 RR 1, Box 190 Corning, Iowa	August 27, 1997 9 a.m.
	Council Bluffs Armory ICN Classroom 2415 Kanesville Rd. Council Bluffs, Iowa	August 27, 1997 9 a.m.
	Dubuque Armory ICN Classroom 195 Radford Rd. Dubuque, Iowa	August 27, 1997 9 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751] (ICN Network) (Cont'd)	Iowa Falls Armory ICN Classroom 217 Georgetown Rd. Iowa Falls, Iowa	August 27, 1997 9 a.m.
	Jefferson Armory ICN Classroom 1577 235 St. Jefferson, Iowa	August 27, 1997 9 a.m.
	Keokuk Armory ICN Classroom 170 Boulevard Rd. Keokuk, Iowa	August 27, 1997 9 a.m.
	LeMars Armory ICN Classroom 1050 Lincoln St. S.E. LeMars, Iowa	August 27, 1997 9 a.m.
	Muscatine Armory ICN Classroom 1421 Park Ave. Muscatine, Iowa	August 27, 1997 9 a.m.
	Oskaloosa Armory ICN Classroom 2260 Hwy. 63 Oskaloosa, Iowa	August 27, 1997 9 a.m.
	Ottumwa Armory ICN Classroom 2858 N. Court Rd. Ottumwa, Iowa	August 27, 1997 9 a.m.
	Shenandoah Armory ICN Classroom 601 Ferguson Rd. Shenandoah, Iowa	August 27, 1997 9 a.m.
	Sioux Center Armory ICN Classroom 102 S. Main St. Sioux Center, Iowa	August 27, 1997 9 a.m.
	Spencer Armory ICN Classroom 11 E. 23 St. Spencer, Iowa	August 27, 1997 9 a.m.
	Waterloo Armory ICN Classroom 3306 Airport Rd. Waterloo, Iowa	August 27, 1997 9 a.m.

TRANSPORTATION DEPARTMENT[761]

Persons with disabilities parking permits, ch 411 IAB 8/13/97 **ARC 7422A**	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	September 4, 1997 10 a.m. (If requested)

TREASURER OF STATE[781]

Linked investments for tomorrow (LIFT), ch 4 IAB 7/30/97 **ARC 7397A** (See also **ARC 7398A**)	Room 116 State Capitol Bldg. Des Moines, Iowa	August 21, 1997 1 p.m.

CITATION of Administrative Rules

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

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

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

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

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

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

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

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

The following list will be updated as changes occur:

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 - AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract and Project Period
Public Health	Behavioral Risk Factor Surveillance System (BRFSS)	State-wide	Private nonprofit or government organizations providing data collection services.	Conduct random sample of Iowa adults (4,000) to obtain health-related behavioral risk factor data.	September 26, 1997	Contract Period January 1, 1998 through December 31, 1998 Project Period January 1, 1998 through December 31, 2003

Application forms may be obtained by contacting:

A.J. Wineski, BRFSS Coordinator
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
515/281-3763
Fax 515/281-4535
e-mail: awineski@idph.state.ia.us

Note: These funds are subject to availability of Center's for Disease Control and Prevention funds.

ARC 7452A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 904.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

This rule requires inmates to pay an incarceration fee of up to $5 per month for custodial expenses as a result of the inmate's incarceration. Expenses may include but not be limited to education, room and board, and treatment programs.

This rule was previously Adopted and Filed Emergency and became effective on June 30, 1997; however, it was later determined that the collection of this fee from all inmates might be impractical based on the determination of each inmate's "ability to pay."

Written comments may be sent to the Director, Iowa Department of Corrections, 523 East 12th Street, Des Moines, Iowa 50319. Comments must be received on or before September 2, 1997.

A public hearing will be held on September 2, 1997, from 1 to 3 p.m. in the Corrections Conference Room at the above address.

This amendment was approved by the Department on July 25, 1997.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7455A**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code section 904.108 as amended by 1997 Iowa Acts, House File 734.

ARC 7451A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 904.508A, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 20, "Institutions Administration," Iowa Administrative Code.

This rule gives authority to the Department of Corrections to deposit and expend commissions paid to the Department by the inmate telephone vendor. The rule also defines criteria for the expenditure of these funds for the benefit of inmates.

It is necessary for the Department to adopt this rule to clarify deposit procedures and to modify the spending authority of each institution's commissions.

Written comments may be submitted to the Director on or before September 2, 1997. Comments should be sent to the Department of Corrections, 523 East 12th Street, Des Moines, Iowa 50319.

A public hearing will be held on September 2, 1997, from 9 to 11 a.m. in the Corrections Conference Room at the above address.

This rule is intended to implement Iowa Code section 904.508A.

The following rule is proposed.

Rescind rule 201—20.20(904) and adopt the following new rule in lieu thereof:

201—20.20(904) Inmate telephone commissions.

20.20(1) All commissions received from the vendor will be deposited in a special account established by the institutions.

20.20(2) All expenditures from this account will be used for the benefit of inmates. Expenditures shall include the enhancement of existing educational, vocational, recreational, work or treatment programs, services or projects, or to initiate new programs, services, or projects. Institutions are encouraged to give spending priority to programs, services, and projects that promote the health and welfare of inmates.

20.20(3) Each institution is authorized to expend or encumber up to 75 percent of available commission funds. Institutions will not be allowed to overspend or borrow from the account.

20.20(4) Twenty-five percent of each commission will be held in reserve to assist other institutional programs, services, or projects.

20.20(5) Requests requiring expenditures or encumbrances from the 25 percent reserve will be reviewed by a committee comprised of the director, deputy director of institutions, and a warden(s) to be selected by the deputy director of institutions. These requests will be reviewed at six-month intervals or upon special need as determined by the director.

a. These requests will be in writing to the deputy director of institutions and shall describe the product or service to be purchased, the expected benefit to inmates, and the actual cost.

b. The committee will approve, deny, or modify the request in writing.

20.20(6) The director may expend and encumber a portion of the 25 percent reserve fund to support or subsidize a service or project at an institution not having sufficient funds to complete a project or service.

This rule is intended to implement Iowa Code section 904.508A.

ARC 7442A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapter 25, "Continuing Education," Iowa Administrative Code.

This amendment implements 1997 Iowa Acts, House File 335, by allowing licensees practicing out of state the ability to meet Iowa's continuing education requirements by meeting the requirements of the state in which they practice.

Any interested person may make written suggestions or comments on this proposed amendment on or before September 2, 1997. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

There will be a public hearing on September 17, 1997, at 1 p.m. in the Second Floor Conference Room, Executive Hills West, 1209 East Court Avenue, 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.

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

The following amendment is proposed.

Amend rule **25.7(153)**, second unnumbered paragraph, as follows:

A dentist or dental hygienist licensed to practice in this state shall be deemed to have complied with the continuing education requirements of this state during periods that the person serves honorably on active duty in the military services, or for periods that the person ~~is a resident of~~ *practices dentistry or dental hygiene in* another state or district having a continuing education requirement for dentistry or dental hygiene and meets all requirements of that state or district for practice therein, or for periods that the dentist or dental hygienist is a government employee working in the person's licensed specialty and assigned to duty outside ~~of~~ the United States, or for other periods of active practice and absence from the state approved by the board.

ARC 7440A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapter 29, "General Anesthesia, Parenteral Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

These amendments change the term "general anesthesia" to "deep sedation/general anesthesia" and the term "parenteral sedation" to "parenteral conscious sedation" as they appear in this chapter. Also, the amendments clarify the equipment requirements, educational requirements, auxiliary requirements, renewal requirements and rules for denial and nonrenewal.

Any interested person may make written suggestions or comments on these proposed rules on or before September 2, 1997. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

There will be a public hearing on September 17, 1997, at 2 p.m. in the Second Floor Conference Room, Executive Hills West, 1209 East Court Avenue, 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 153.33 and 153.34.

The following amendments are proposed.

ITEM 1. Amend the title of **650—Chapter 29** as follows:

CHAPTER 29
DEEP SEDATION/GENERAL ANESTHESIA,
PARENTERAL *CONSCIOUS* SEDATION AND
NITROUS OXIDE INHALATION ANALGESIA

ITEM 2. Amend rule 650—29.1(153) by amending the introductory paragraph and the definitions of "General anesthesia" and "Parenteral sedation" as follows:

650—29.1(153) Definitions. For the purpose of these rules relative to the administration of *deep sedation*/general anesthesia, parenteral *conscious* sedation, and nitrous oxide inhalation analgesia by licensed dentists the following definitions shall apply:

Deep sedation/ ~~General~~ *general* anesthesia is a controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command.

Parenteral *conscious* sedation is a depressed level of consciousness, produced by the parenteral administration of pharmacologic substances, that retains the patient's ability to independently and continuously maintain an airway and re-

DENTAL EXAMINERS BOARD[650](cont'd)

spond appropriately to physical stimulation or verbal command.

ITEM 3. Amend subrules 29.2(1) and 29.2(2) as follows:

29.2(1) *Deep sedation/*~~General~~ *general* anesthesia. ~~Commencing 12 months after the effective date of this rule, dentists~~ *Dentists* licensed in this state shall not administer *deep sedation/*general anesthesia in the practice of dentistry until they have obtained a permit as required by the provisions of this chapter.

29.2(2) Parenteral *conscious* sedation. ~~Commencing 12 months after the effective date of this rule, dentists~~ *Dentists* licensed in this state shall not administer parenteral *conscious* sedation in the practice of dentistry until they have obtained a permit as required by the provisions of this chapter.

ITEM 4. Amend rule 650—29.3(153) as follows.

650—29.3(153) Requirements for the issuance of *deep sedation/*general anesthesia permits.

29.3(1) A permit may be issued to a licensed dentist to use *deep sedation/*general anesthesia on an outpatient basis for dental patients provided the dentist meets the requirements set forth by the board which may include the following:

a. Has successfully completed Part II of the American Dental Association Council on Dental Education Guidelines and

b. Has formal training in airway management; or

~~a~~ *c.* Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; or

~~b~~ *d.* Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or

~~c~~ *e.* Is eligible for examination by the American Board of Oral and Maxillofacial Surgery; or

~~d~~ *f.* Is a member of the American Board of Oral and Maxillofacial Surgeons; or

~~e~~ *g.* Is a Fellow of the American Dental Society of Anesthesiology.

29.3(2) When an applicant has not met the above requirements, the applicant must complete a remedial training program in anesthesiology and related academic subjects beyond the undergraduate dental school level. The remedial training program must be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the Anesthesia Credentials Committee and include, at a minimum, evaluation of the applicant's knowledge of case management and airway management.

~~29.3(2)~~ *29.3(3)* A dentist using *deep sedation/*general anesthesia shall maintain a properly equipped facility ~~for the administration of general anesthesia~~. *The facility shall maintain and the dentist shall be trained on the following equipment: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. The facility shall be* staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident ~~thereto.~~ *to the administration of general anesthesia. A licensee may submit a request to the board for waiver of any of the provisions of this subrule. Waiver requests will be considered by the board on an individual basis, and shall be granted only if the board determines that there is a reasonable basis for the waiver.*

~~29.3(3)~~ *29.3(4)* A dentist ~~using~~ *administering deep sedation/*general anesthesia *must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course* and the auxiliary personnel shall ~~be trained~~ *maintain current certification in basic life support* and *be* capable of administering basic life support.

~~29.3(4)~~ *29.3(5)* A dentist who is performing a procedure for which *deep sedation/*general anesthesia was induced shall not administer the general anesthetic and monitor the patient without the presence and assistance of *at least two* qualified auxiliary personnel *in the room who are qualified under subrule 29.3(4).*

~~29.3(5)~~ *29.3(6)* A dentist qualified to administer *deep sedation/*general anesthesia under this rule may administer parenteral sedation and nitrous oxide inhalation analgesia provided ~~they meet~~ *the dentist meets* the ~~requirement~~ *requirements* of 29.6(153).

~~29.3(6)~~ *29.3(7)* A licensed dentist who has been utilizing *deep sedation/*general anesthesia in a competent manner for the five-year period preceding the effective date of this rule, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in ~~29.3(2), 29.3(3), and 29.3(4)~~ *29.3(3), 29.3(4), and 29.3(5).*

ITEM 5. Amend rule 650—29.4(153) as follows:

650—29.4(153) Requirements for the issuance of parenteral *conscious* sedation permits.

29.4(1) A permit may be issued to a licensed dentist to use parenteral *conscious* sedation on an outpatient basis for dental patients provided the dentist meets the requirements set forth by the board which may include the following:

~~a. Has documented experience at the graduate level, acceptable to the board, specifying the type, the number of hours, the length of training and the number of patient contact hours, including documentation of the number of supervised parenteral sedation cases; or~~

a. Has successfully completed Parts I and III of the American Dental Association Council on Dental Education Guidelines and

b. Has formal training in airway management; or

c. Has submitted evidence of successful completion of parenteral conscious sedation experience at the graduate level, which is approved by the board. The applicant shall document this experience by specifying the type of experience; the number of hours; the length of training; and the number of patient contact hours including documentation of the number of supervised parenteral conscious sedation cases.

~~b~~ *d.* Has successfully completed a formal training program, approved by the board, which included physical evaluation, IV sedation, airway management, monitoring, basic life support and emergency management.

29.4(2) When an applicant has not met the above requirements, the applicant must complete a remedial training program in parenteral sedation and related academic subjects beyond the undergraduate dental school level. The remedial training program shall be prior approved by the board. The applicant may be subject to professional evaluation as part of the application process. The professional evaluation shall be conducted by the Anesthesia Credentials Committee and include at a minimum the evaluation of the applicant's knowledge of case management and airway management.

~~29.4(2)~~ *29.4(3)* A dentist utilizing parenteral *conscious* sedation shall maintain a properly equipped facility ~~for the administration of parenteral sedation~~. *The facility shall*

DENTAL EXAMINERS BOARD[650](cont'd)

maintain and the dentist shall be trained on the following equipment: anesthesia or analgesia machine, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. The facility shall be staffed with trained auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident ~~thereto~~ *to the administration of parenteral conscious sedation. A licensee may submit a request to the board for waiver of any of the provisions of this subrule. Waiver requests will be considered by the board on an individual basis, and shall be granted only if the board determines that there is a reasonable basis for the waiver.*

~~29.4(3)~~ *29.4(4)* A dentist ~~using~~ *administering* parenteral *conscious* sedation *must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course* and the auxiliary personnel shall ~~be trained~~ *maintain certification in basic life support* and *be* capable of administering basic life support.

~~29.4(4)~~ *29.4(5)* A dentist who is performing a procedure for which parenteral *conscious* sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of *at least one* qualified auxiliary personnel *in the room who is qualified under subrule 29.4(4).*

~~29.4(5)~~ *29.4(6)* A licensed dentist who has been utilizing parenteral *conscious* sedation on an outpatient basis in a competent manner for five years preceding the effective date of this rule, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules ~~29.4(2), 29.4(3) and 29.4(4)~~ *29.3(3), 29.4(4) and 29.4(5).*

~~29.4(6)~~ *29.4(7)* Dentists qualified to administer parenteral *conscious* sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of 29.6(153).

~~29.4(7)~~ *29.4(8)* If parenteral *conscious* sedation results in a general anesthetic state, the rules for *deep sedation*/general anesthesia apply.

ITEM 6. Amend subrules 29.5(1) to 29.5(4) as follows:

29.5(1) No dentist shall use or permit the use of *deep sedation*/general anesthesia or parenteral *conscious* sedation in a dental office for dental patients, unless the dentist possesses a then currently valid permit issued by the Iowa board of dental examiners. The dentists holding a permit shall be subject to review and their facilities subject to inspection as deemed appropriate by the board.

29.5(2) An application for a *deep sedation*/general anesthesia permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 29.3(153).

29.5(3) An application for a parenteral *conscious* sedation must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 29.4(153).

29.5(4) A provisional permit may be granted the new applicant based solely on credentials until all processing and investigation have been completed. *A provisional permit may be issued only if the applicant will be practicing at a facility that has been previously inspected and approved by the board.*

ITEM 7. Amend subrule 29.6(1), paragraph "c," and add a new paragraph "d" as follows:

c. Has adequate equipment with fail-safe features and ~~a 25 percent~~ minimum oxygen flow *which meets FDA standards.*

d. Performs routine maintenance on equipment every two years and maintains documentation of such maintenance, and provides such documentation to the board upon request.

ITEM 8. Amend rule 650—29.8(153) as follows:

650—29.8(153) Reporting of adverse occurrences related to *deep sedation*/general anesthesia, parenteral *conscious* sedation and nitrous oxide inhalation analgesia.

29.8(1) Reporting. All licensed dentists in the practice of dentistry in this state must submit a report within a period of 30 days to the board of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as a result of nitrous oxide inhalation analgesia, parenteral *conscious* sedation or *deep sedation*/general anesthesia related thereto. The report shall include responses to at least the following:

a. Description of dental procedure.

b. Description of preoperative physical condition of patient.

c. List of drugs and dosage administered.

d. Description, in detail, of techniques utilized in administering the drugs utilized.

e. Description of adverse occurrence:

1. Describe in detail symptoms of any complications, to include but not be limited to onset, and type of symptoms in patient.

2. Treatment instituted on the patient.

3. Response of the patient to the treatment.

f. Describe the patient's condition on termination of any procedures undertaken.

29.8(2) Failure to report. Failure to comply with subrule 29.8(1), when the occurrence is related to the use of *deep sedation*/general anesthesia, parenteral *conscious* sedation, or nitrous oxide inhalation analgesia, may result in the dentist's loss of authorization to administer *deep sedation*/general anesthesia, parenteral *conscious* sedation, or nitrous oxide inhalation analgesia or in other sanctions provided by law.

ITEM 9. Adopt new rule 650—29.9(153) as follows:

650—29.9(153) Anesthesia credentials committee.

29.9(1) The anesthesia credentials committee is an advisory committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall consist of at least seven members. At least four members of the committee shall be permit holders.

29.9(2) The anesthesia credentials committee shall perform the following duties at the request of the board:

a. Review all permit applications and make recommendations to the board regarding those applications.

b. Conduct site visits at facilities under subrule 29.5(1) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.

c. Perform professional evaluations under subrules 29.3(2) and 29.4(2) and report the results of those evaluations to the board.

ITEM 10. Adopt new rule 650—29.10(153) as follows:

650—29.10(153) Renewal. Beginning 12 months from the effective date of these rules and for each renewal thereafter, permit holders are required to maintain evidence of renewal of ACLS certification.

Beginning 12 months from the effective date of these rules and for each renewal thereafter, permit holders are required to submit a minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.

ITEM 11. Adopt new rule 650—29.11(153) as follows:

650—29.11(153) Rules for denial or nonrenewal. A dentist who has been denied a deep sedation/general anesthesia or parenteral conscious sedation permit or renewal may appeal the denial and request a hearing on the issues related to the permit or renewal denial by serving a notice of appeal and request for hearing upon the executive director not more than 30 days following the date of the mailing of the notification of the permit or renewal denial, or not more than 30 days following the date upon which the dentist was served notice if notification was made in the manner of service of an original notice. The hearing shall be considered a contested case proceeding and shall be governed by the procedures set forth in 650 IAC 51.

ITEM 12. Adopt new rule 650—29.12(153) as follows:

650—29.12(153) Record keeping. The patient chart must include preoperative and postoperative vital signs, drugs administered, dosage administered, anesthesia time in minutes, and monitors used. Intermittent vital signs shall be taken and recorded in patient chart during procedures and until the patient is fully ambulatory. The chart should contain the name of the person to whom the patient was discharged.

ARC 7441A

DENTAL EXAMINERS BOARD[650]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 Iowa Board of Dental Examiners gives Notice of Intended Action to amend Chapter 51, "Procedural Rules," Iowa Administrative Code.

This amendment implements 1997 Iowa Acts, House File 335, and will allow public board member participation in disciplinary hearing panels. Also included is a provision to require that a person whose license was suspended by the Board may be subject to reexamination at the time of reinstatement.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 2, 1997. Such written comments should be directed to Constance L. Price, Executive Director, Iowa Board of Dental Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

There will be a public hearing on September 17, 1997, at 1:30 p.m. in the Second Floor Conference Room, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa. At the hearing persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

These proposed amendments are intended to implement Iowa Code section 272C.6.

The following amendments are proposed.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) A hearing may be conducted before the board or a panel of not less than three members of the board ~~who are licensed to practice dentistry or dental hygiene in this state.~~ *at least two of whom are licensed by the board.*

ITEM 2. Amend subrule 51.12(7) as follows:

51.12(7) A person whose license to practice dentistry or dental hygiene was revoked *or suspended* must successfully complete the examination required at the time of reinstatement for dental or dental hygiene licensure. The board may in its discretion require remedial training in addition to or in lieu of the examination requirements.

ARC 7437A

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 28, "Local Housing 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 732, section 4.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on September 2, 1997. Interested persons may submit written or oral comments by contacting Monica Fischer, Division of Community and Rural Development, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4797.

A public hearing to receive comments concerning the proposed new chapter will be held September 2, 1997, at 2 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Monica Fischer by 10 a.m., September 2, 1997, to be placed on the hearing agenda.

These rules are intended to implement 1997 Iowa Acts, House File 732, section 4.

The following new chapter is proposed.

CHAPTER 28
LOCAL HOUSING ASSISTANCE PROGRAM

261—28.1(77GA,HF732) Purpose. The local housing assistance program is designed to assist communities on a cooperative basis to address housing development needs to

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

position the communities for economic development, to meet housing needs arising as a result of other economic development in the area and to meet other unmet housing needs.

261—28.2(77GA,HF732) Definitions. When used in this chapter, unless the context otherwise requires:

"Activity" means one or more specific housing activities, projects or programs assisted with LHAP funds.

"Community" means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

"Economic development" means community action which directly leads to creation of more jobs or higher-paying jobs than were available before the action.

"Economic development organization" means an entity organized for the purpose of creating more jobs or higher-paying jobs in an area.

"HART" means the housing application review team, a body of affordable housing funding agencies which meets to review housing proposals.

"Housing needs assessment" means a comprehensive analysis of housing needs for one or more units of local government done in a format that conforms to IDED guidelines.

"Housing trust fund" means a fund for housing development that is sustained over time by dedicated revenues or earnings on invested capital.

"IDED" means the Iowa department of economic development.

"LHAP" means local housing assistance program.

"Local housing organization" means an entity organized to represent community housing development interests.

"Local support" means endorsement by local individuals or entities who have a substantial interest in a housing activity, particularly by those whose opposition or indifference would hinder the activity's success.

"Recipient" means the entity under contract with IDED to receive LHAP funds and undertake the funded housing activity.

"Recognized neighborhood association" means a group acknowledged by a city council or county board of supervisors as having the authority to speak for the general needs and welfare of a neighborhood.

"Subrecipient" means an entity operating under an agreement or contract with a recipient to carry out a funded LHAP activity.

261—28.3(77GA,HF732) Eligible applicants. Eligible applicants for LHAP funds include all incorporated cities and counties within the state of Iowa, housing trust funds, local housing organizations, recognized neighborhood associations and economic development organizations.

28.3(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

28.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—28.4(77GA,HF732) Eligible activities and forms of assistance.

28.4(1) Eligible activities include those which better position a community to take advantage of economic development opportunities, meet housing needs arising as a result of previous successful economic development efforts in the area or meet other unmet housing needs. Eligible activities include new construction, rehabilitation, conversion, reconstruction, acquisition, demolition for the purpose of clearing lots for housing development, site improvement and other housing-related activities as may be deemed appropriate by IDED.

a. Assisted housing shall be nonluxury housing with suitable amenities.

b. Assisted housing may be single-family housing or multifamily housing, and may be designed for occupancy by homeowners or tenants.

28.4(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, interest subsidies, deferred payment loans, forgivable loans, loan guarantees or other forms of assistance as may be approved by IDED.

261—28.5(77GA,HF732) Application procedure. LHAP funds shall be awarded through an annual competition.

28.5(1) IDED shall announce the availability of funds and instructions for applying for funds through direct mail, public notices, media releases, workshops and other means determined necessary by IDED.

28.5(2) Application forms shall be available upon request from IDED, 200 East Grand Avenue, Des Moines, Iowa 50309, (515)242-4825.

28.5(3) IDED may provide technical assistance as necessary to applicants.

28.5(4) Applicants shall submit a preapplication for review by the housing application review team by a deadline established by IDED, which shall be no earlier than 60 days after the announcement of availability of funds.

28.5(5) Applicants whose preapplications best meet the preliminary review criteria, as determined by the HART review and IDED staff review, shall be invited to submit full applications for funds.

28.5(6) IDED shall provide by mail full application forms and instructions to the selected applicants with the invitation to apply.

28.5(7) Applications shall be submitted by a deadline established by IDED, which shall be no earlier than 60 days after the preapplication due date.

261—28.6(77GA,HF732) Minimum application requirements. To be considered for funding under LHAP, an application must meet the following preliminary review criteria:

28.6(1) A housing needs assessment must have been completed within the five years preceding application for the community in which the activity will be undertaken.

28.6(2) The application must propose a housing development activity designed to position the community to take advantage of economic development opportunities, to meet housing needs arising as a result of previous successful economic development efforts in the area or to meet other unmet housing needs.

28.6(3) There must be demonstrated local support for the proposed activity.

28.6(4) A financing gap must exist after all other financial resources have been identified for the proposed activity.

28.6(5) Sufficient local, state or federal funds either are not available or cannot be obtained within the time frame required to complete the proposed activity.

261—28.7(77GA,HF732) Application review criteria. IDED shall evaluate applications and make funding decisions using criteria which include the following:

1. Is the proposed activity consistent with the recommendations of the community's housing needs assessment?

2. Did the need for the proposed activity arise as a result of economic development efforts or opportunities not reflected in the housing needs assessment? If so, can the applicant demonstrate that lack of LHAP funding will cause the

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

failure of the economic development efforts necessitating the proposed housing activity?

3. Has a comprehensive housing plan for the community for which the activity is proposed been adopted?

4. To what extent are other financial resources leveraged by the proposed LHAP assistance?

5. Does the application demonstrate the linkages between the proposed housing activity and specific economic development efforts or opportunities in the area?

6. Is there evidence of local administrative capacity?

7. Can the proposed activity be completed in a timely manner?

8. Is there coordination with other housing and economic development efforts in conjunction with the proposed activity?

9. Does the form of assistance requested allow opportunities for reuse of funds?

10. Will the proposed activity have a significant impact on the identified housing need?

11. Have problems related to the proposed activity been resolved or are solutions addressed in the application?

12. Are costs related to the proposed housing activity reasonable?

13. IDED staff may conduct site evaluations of proposed activities.

261—28.8(77GA,HF732) Allocation of funds.

28.8(1) IDED may retain up to 2½ percent of LHAP funds for administrative costs associated with program implementation and operation.

28.8(2) LHAP awards shall be limited to no more than $500,000.

a. Recipients may use up to 5 percent of a total LHAP award for administrative costs.

b. IDED reserves the right to negotiate the amount and terms of an award and the amount of administrative costs proposed.

28.8(3) If LHAP funds remain after awards are made under the annual competition, IDED may announce the availability of remaining funds and award remaining funds through another competition consistent with the application procedures described in this chapter.

261—28.9(77GA,HF732) Administration of awards. Applications selected to receive LHAP awards shall be notified by letter from the IDED director at a date determined by IDED, which shall be no later than 90 days after the application due date.

28.9(1) A contract shall be executed between the recipient and IDED. These rules and applicable state laws and regulations shall be part of the contract.

a. The recipient must execute and return the contract to IDED within 45 days of transmittal of the final contract from IDED. Failure to do so may be cause for IDED to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

c. Awards may be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. Awards may be conditioned upon IDED receipt and approval of an administrative plan for the funded activity.

28.9(2) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than $500 per request, except for the final draw of funds.

28.9(3) Record keeping and retention. The recipient shall retain all financial records, supporting documents and all other records pertinent to the LHAP activity for one year after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to LHAP funds.

28.9(4) Performance reports and reviews. Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

28.9(5) Amendments to contracts. Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded activities that change the scope, location, objectives or scale of the approved activity. Amendments must be requested in writing by the recipient and are not considered valid until approved in writing by IDED following the procedure specified in the contract between the recipient and IDED.

28.9(6) Contract closeout. Upon contract expiration, IDED shall initiate contract closeout procedures.

28.9(7) Compliance with state and local laws and regulations. Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program and with applicable local regulations.

28.9(8) Remedies for noncompliance. At any time before contract closeout, IDED may, for cause, find that a recipient is not in compliance with the requirements of this program. At IDED's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to IDED. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded activities in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations or the lack of a continuing capacity of the recipient to carry out the approved activity in a timely manner.

28.9(9) Appeals process for findings of noncompliance. Appeals will be entertained in instances where it is alleged that IDED staff participated in a decision which was unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to IDED. Appeals should be addressed to the division administrator of the division of community and rural development. Appeals shall be in writing and submitted to IDED within 15 days of receipt of the finding of noncompliance. The appeal shall include reasons why the decision should be reconsidered. The director will make the final decision on all appeals.

These rules are intended to implement 1997 Iowa Acts, House File 732, section 4.

ARC 7436A

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 42, "Governmental Enterprise Fund," Iowa Administrative Code.

The proposed new rules establish eligibility requirements, application procedures, review criteria and administrative procedures for a new program authorized under 1997 Iowa Acts, House File 655, section 1(3)"c."

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on September 2, 1997. Interested persons may submit written or oral comments by contacting Sue Lambertz, Community and Rural Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4922.

A public hearing to receive comments about the proposed new chapter will be held on September 2, 1997, from 10 to 11 a.m. at the above address in the Northeast Conference Room on the second floor. Individuals interested in providing comments at the hearing should contact Sue Lambertz by 4 p.m. on August 29, 1997, to be placed on the hearing agenda.

These rules are intended to implement 1997 Iowa Acts, House File 655, section 1(3)"c."

The following new chapter is proposed.

CHAPTER 42
GOVERNMENTAL ENTERPRISE FUND

261—42.1(15) **Purpose.** The purpose of this program is to assist local governments in addressing community and economic development challenges and opportunities. Technical and financial assistance will be provided to local governments to develop innovative approaches to the delivery of governmental services resulting in better access to services, greater efficiencies, and services better suited to business and residential needs.

261—42.2(15) **Program eligibility.** Eligible applicants include cities, counties, and councils of government on behalf of individual city and county projects; multicommunity or county projects; or coalitions of public/private entities including but not limited to local governments, fire/EMS departments, educational institutions, not-for-profit corporations, hospitals, state agencies, or development organizations. Applicants must be able to demonstrate a match which equals at least 25 percent of the grant amount requested in the form of cash, capital investment, or in-kind services.

42.2(1) Eligible projects. Examples of eligible projects include but are not limited to the following:

a. Development of new public service delivery systems which could result in improved public access, more appropriate customer service, or more efficient use of resources;

b. Development of collaborative efforts among public/private/not-for-profit entities for the design and creation of joint service provision which could result in greater efficiencies, elimination of duplicative services, or creation of better public services aligned with business and residential needs;

c. Assessment of existing service provision that will enable local government or service departments, such as fire and emergency medical service units, to select and prioritize strategies for the improvement of operations and structures to meet business and residential demands.

42.2(2) Reserved.

261—42.3(15) **General policies for applications.**

42.3(1) The maximum award for a single project is $50,000. Awards may be in the form of either cash or technical assistance. Cash or technical assistance awards will vary depending upon the complexity of the issue, geographical area of service, level of population in the service area, number of issues involved, and diversity of the consortium.

42.3(2) If a consortium of entities applies, applications shall include letters of support from each entity indicating roles, responsibilities, and support in the form of either cash or in-kind services.

42.3(3) If a consortium of entities applies, one community, county, or council of governments shall be designated as the recipient of funds. An official of that legal entity shall sign the application accepting responsibility for the funds.

42.3(4) Program implementation timetables shall not exceed 24 months, unless prior written approval is given by the department.

42.3(5) The department will disseminate a request for proposals to appropriate entities.

261—42.4(15) **Application procedures.** Applications shall be submitted to Rural Development Project Manager, Governmental Enterprise Fund, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address.

261—42.5(15) **Application contents.** Required contents of the application include:

42.5(1) A summary sheet including title and project overview; name, address, and telephone number of one person who will serve as the contact for the application; the geographic area to be served; and total program budget including applicant match.

42.5(2) A description of needs or problems, objectives, activities, project timetable, and a description of the final product/manual.

42.5(3) A budget for the project including cash and in-kind match.

261—42.6(15) **Review process.** Each eligible application will be reviewed by a committee within the department. Applications that score fewer than 300 points under subrule 42.6(2) will not be recommended for funding. Applicants may be interviewed further to explore the potential for providing technical assistance, gain additional information concerning the proposal, and negotiate the project's workplan.

42.6(1) Ranking. The committee will rank the applications based on the following criteria:

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

a. Appropriateness and effectiveness of the project or model in addressing the issues or problems identified within the community or area.

b. Networking and cooperation among governmental units, existing service providers, not-for-profit organizations, or other groups as appropriate to the issue.

c. Need for the project in this community/area (e.g., outdated technology or processes, remoteness, low population density, poor accessibility to services, traditional barriers such as historical community rivalries, lack of leadership, increased demand by public for an existing service).

d. Viability of objectives and workplan and impact of project on community/communities (e.g., reduced cost of service provision, ability to expand scope of service, improved accessibility of services, improved ability to fund needed infrastructure).

e. Local effort by community or consortium of communities (e.g., cash, office space, in-kind contributions, volunteer hours).

42.6(2) Scoring. The scoring system has a maximum of 500 points.

a. Appropriateness of the project to the issues/problems. 100 points possible.

b. Networking or cooperative efforts among participating governmental units and service providers. 50 points possible.

c. Need for the project. 50 points possible.

d. Viability of objectives and workplan and impact of project. 200 points possible.

e. Local effort. 100 points possible.

261—42.7(15) Award process. Recommendations by the committee for funding will be forwarded to the director of the department for final decisions. Applicants will be notified in writing after the final decisions on grants are made. Successful applicants will enter into an agreement with the department which clarifies their responsibilities as a grantee for oversight of the project and reporting to the department.

42.7(1) Expenses eligible for reimbursement may include but are not limited to the following:

a. Coordinating staff for the governmental units or community groups participating in the project.

b. Feasibility studies or implementation of a locally developed study or plan.

c. Educational/training expenses necessary to the outcome of the project.

d. Travel expenses of the local coordinator, if hired through a participating governmental unit.

42.7(2) Expenses ineligible for reimbursement may include but are not limited to the following:

a. Purchase of land, buildings or improvements thereon.

b. Expenses for development of sites and facilities.

c. Expenses for equipment, materials, supplies, telephone, or faxes related to the project.

d. Expenses for studies or plans that are routinely developed as a part of city or county function or operation, such as development of comprehensive planning documents, community builder plans or engineering studies of water, sewer, streets/roads.

261—42.8(15) Program management.

42.8(1) Record keeping. Financial records, supporting documents, statistical records and all other records pertinent to the project shall be retained by the recipient of funds for a period of three years after the contract expiration date.

42.8(2) A contract will be negotiated with the successful applicant to define the terms for disbursement of funds and responsibilities.

42.8(3) Representatives of the department and state auditors shall have access to all books, accounts and documents belonging to or in use by the grantee pertaining to the receipt of assistance under this program.

42.8(4) All contracts under this program are subject to audit.

261—42.9(15) Performance reviews.

42.9(1) Applicants will be required to submit a quarterly performance report to the department. The report will assess progress on the goals and project activities. Some projects may require the completion of a final product or manual to be submitted to the department before final payment is made.

42.9(2) The department may perform field visits as deemed necessary.

These rules are intended to implement 1997 Iowa Acts, House File 655, section 1(3)"c."

ARC 7435A

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 49, "Rural Innovation Grants," Iowa Administrative Code.

The proposed amendment extends the eligible population level from 20,000 to 30,000 to allow larger communities with similar issues to participate in the program.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on September 2, 1997. Interested persons may submit written or oral comments by contacting Sue Lambertz, Community and Rural Development Division, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515) 242-4922.

A public hearing to receive comments on the amendment will be held on September 2, 1997, from 11 a.m. to 12 noon at the above address in the Northeast Conference Room on the second floor. Individuals interested in providing comments at the hearing should contact Sue Lambertz by 4 p.m. on August 29, 1997, to be placed on the hearing agenda.

This amendment is intended to implement 1997 Iowa Acts, House File 655, section 1(3)"c."

The following amendment is proposed.

Amend rule 261—49.3(76GA,ch204) as follows:

261—49.3(76GA,ch204) Population guideline. A city with a population of ~~20,000~~ *30,000* or less or a coalition of cities where the largest city in the coalition has a population of ~~20,000~~ *30,000* or less is eligible to apply.

ARC 7439A

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 include a method of calculating wages based on an "average regional wage"; increase the minimum wage requirements from 85 percent to 90 percent of the average county wage (or 90 percent of the proposed average regional wage); establish a starting project wage "floor" of $7 per hour for an existing Iowa business or $7.50 per hour for a business being recruited to Iowa; increase the wage cap from $9.31 to $9.50; establish a three-year time frame for job creation for loans and forgivable loans; and remove outdated references to the Iowa Code.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 3, 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; E-mail address at ken.boyd@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on September 3, 1997, at 10 a.m. at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Ken Boyd by 4 p.m. on September 2, 1997, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code sections 15.315 to 15.320.

The following amendments are proposed.

ITEM 1. Amend rule **261—53.2(15)** by amending the definitions of "Agreement expiration date," "Average county wage scale," "Community base employment," and "Project expiration date" and by adding a **new** definition, "Average regional wage," as follows:

"Agreement expiration date" means the date the CEBA agreement expires. ~~In the case of a forgivable loan, the expiration date is the date of final loan repayment, usually five years from the date of award.~~

"Average county wage ~~scale~~" 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 employment services, audit and analysis section. 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 Iowa 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.

"Community base employment" means the total number of full-time equivalent jobs the business employs at the time of application for CEBA funds *less any jobs retained as a direct result of the CEBA project.*

"Project expiration date" means the date when the recipient must complete all project expenditures and have fulfilled the job attainment goal. In the case of small business gap financing projects, it is ~~two~~ *three* years from the date of award. In the case of *venture projects,* business opportunities or new product development projects, it could be up to five years.

ITEM 2. Amend subrule 53.6(1) as follows:

53.6(1) General policies.

a. An applicant may submit as many different applications as it wishes at any time. However, if the department is reviewing two or more applications from the same applicant at the same time, it may ask the applicant to rank them in the order preferred by the applicant;

b. Only one applicant may apply for any given project;

c. No single project may be awarded more than $1 million unless at least two-thirds of the members of the board approve the award. However, this restriction will not apply after the first $10 million has been credited to the CEBA program in any given year. This restriction does not apply to the float loan described in 53.5(2)"4."

d. No single project may be awarded a forgivable loan of more than $500,000.

e. No single project may be awarded more than $500,000 unless all other applicable CEBA requirements and each of the following criteria is met:

(1) The business has not closed or substantially reduced its operation in one area of the state and relocated substantially the same operation in the community. This requirement does not prohibit a business from expanding its operation in the community if existing operations of a similar nature in the state are not closed or substantially reduced.

(2) The business must provide and pay at least 80 percent of the cost of a standard medical and dental insurance plan *or its equivalent* for all full-time employees working at the facility in which the new investment occurred.

(3) The business shall agree to pay a median wage for new full-time jobs of at least 130 percent of the average wage in the county in which the community is located. This requirement may be waived by the department in the case of a float loan described in 53.5(2)"4" if the net value of the award is determined by the department to be less than $500,000.

f. No more than $100,000 may be awarded to a business start-up unless that business's average *starting* wage equals or exceeds ~~85~~ *90* percent of the *average* county ~~average~~ *wage, 90 percent of the average regional wage,* or ~~$9.31~~ *$9.50,* whichever is ~~lower~~ *lowest,* and over 50 percent of the business's employees' wages are at or above the ~~85~~ *90* percent level or ~~$9.31~~ *$9.50,* whichever is lower.

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

g. To be eligible for assistance the business shall provide for a preference for hiring residents of the state or the economic development area, except for out-of-state employees offered a transfer to Iowa or the economic development area.

h. All applicants for financial assistance shall comply with the requirements of 261—Chapter 80.

i. To be eligible for assistance, applicants shall meet the following wage threshold requirements:

(1) Project positions shall have an average starting wage of at least ~~85~~ *90* percent of the average county wage ~~scale~~, *90 percent of the average regional wage,* or ~~$9.31~~ *$9.50*, whichever is ~~lower~~ *lowest*.

(2) Fifty percent or more of the jobs to be created or retained shall have an average starting wage of at least ~~85~~ *90* percent of the average county wage ~~scale~~, *90 percent of the average regional wage,* or ~~$9.31~~ *$9.50*, whichever is ~~lower~~ *lowest*.

(3) If the applicant is a business start-up, project positions shall have an average starting wage of at least ~~75~~ *80* percent of the average county wage ~~scale~~, *80 percent of the average regional wage,* or ~~$9.31~~ *$9.50*, whichever is ~~lower~~ *lowest*, and over 50 percent of the business's employees' wages shall be at or above the ~~75~~ *80* percent level or ~~$9.31~~ *$9.50*, whichever is lower.

(4) The ~~$9.31~~ *$9.50* wage scale referenced in this rule shall be adjusted annually by calculating the percent increase or decrease in average Iowa hourly earnings level for all production and nonproduction workers in the private sector from the month of June of the previous year to June of the current year. This report is compiled by the Iowa ~~department of employment services~~ *workforce development department*.

(5) No project will be approved where the starting project wages are below $7 per hour for an existing Iowa business or $7.50 per hour for a business being recruited to Iowa.

(6) Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage and above the minimum average county wage or average regional wage as defined in 53.6(1).

(7) The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. The starting wage is associated with a training period which is of relatively short duration, as documented by the business; and

2. The wages will exceed 90 percent of the average county wage, 90 percent of the average regional wage, or $9.50 at the conclusion of the training period as documented by the business; and

3. CEBA funds will be released only at the conclusion of the training period when the average county or average regional wage is achieved.

j. A business receiving moneys from the department for the purpose of job creation shall make available 10 percent of the new jobs created for PROMISE JOBS program participants.

~~k. Transition provision. Applications submitted on or before September 8, 1994, from a primary business within a quality jobs enterprise zone (QJEZ) designated by the director pursuant to Iowa Code section 15A.9, shall comply with the administrative rules for the CEBA program in effect on the date the department designated the area as a QJEZ.~~

ITEM 3. Amend subrule 53.7(2), paragraph "b," as follows:

b. The quality of jobs to be created. In rating the quality of the jobs, the department shall award more points to those jobs that have a higher wage scale, a lower turnover rate, are full-time, career-type positions, or have other related factors. Those applications that have average *starting* wage scales which are ~~15~~ *10* percent or more below that of the average county wage ~~scale~~ *or average regional wage* shall be given an overall score of zero. Business start-ups shall be given a score of zero only if their wage scales are ~~25~~ *20* percent or more below that of the average county wage ~~scale~~ *or average regional wage*.

ITEM 4. Amend subrule 53.8(3), paragraph "a," as follows:

a. Local effort compared with local resources. Maximum — 20 points. This includes assistance from the city, county, community college, chambers of commerce, economic development groups, utilities, or other local sources, compared to the resources reasonably available from those sources. ~~Up to a maximum of 25 percent of the assistance from Iowa Code chapter 260E or 260F or tax abatements issued under Iowa Code chapters 404 and 427B and 100 percent of the local dollars committed to a RISE project will be considered local effort.~~ The form of local assistance compared to the form of CEBA assistance requested will be considered (e.g., in-kind, grant, loan, forgivable loan, job training, tax abatement, tax increment financing~~, etc.~~). The dollar amount of local effort and the timing of the local effort participation as compared to the dollar amount and timing of the requested CEBA participation will also be considered. Conventional financing, inadequately documented in-kind financing, and local infrastructure projects not specifically directed at the business are not considered local effort.

ITEM 5. Amend subrule 53.8(4) as follows:

53.8(4) Project period. Projects funded under rule 53.8(15) are considered to have a project period of ~~two~~ *three* years for meeting job attainment goal and other related performance goals.

~~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 as 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).

ITEM 6. Amend subrule 53.9(4) as follows:

53.9(4) 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).

ITEM 7. Amend **53.13(3)"a"(2)** as follows:

(2) If the recipient achieves more than 50 percent of the job attainment goal, the award will be prorated between the percentage of jobs attained and the percentage of shortfall. The pro-rata amount of the award associated with the per-

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

centage of shortfall will be amortized ~~over the remaining term of the forgivable loan, or in the case of a grant, buy-down, or interest subsidy, three years~~ *over a two-year period* (beginning at the ~~agreement~~ *project* expiration date) at an annual interest rate as determined periodically by the board. Interest will be charged beginning with the date the recipient received the funds; interest due from the date funds are received to the closeout date will be due immediately.

ARC 7433A

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 56, "Entrepreneurs with Disabilities," Iowa Administrative Code.

The proposed amendments update Iowa Code references and reduce the amount of a grant award from $15,000 to $10,000. This reduction is necessary to ensure the availability of financial assistance to eligible applicants. Previously, financial assistance funds have been exhausted and requests have exceeded available funding.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 5, 1997. Interested persons may submit written or oral comments by contacting Mike Miller, Bureau of Business Finance, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4827; E-mail address: mike.miller@ided.state.ia.us.

A public hearing to receive comments about the proposed amendments will be held on September 5, 1997, at 1 p.m. at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Mike Miller by 4 p.m. on September 4, 1997, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.313(2)"g."

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 56** by striking (75GA,ch1199) and inserting (15) wherever it appears.

ITEM 2. Amend rule **261—56.2(15)**, definition of "Financial assistance grant," as follows:

"Financial assistance grant" means moneys awarded to an applicant based upon a sources and uses statement form. These moneys may be used for, but are not limited to, equipment purchases and working capital. Working capital may include, but is not limited to, design and printing of marketing materials, advertising, rent (up to six months), direct mail postage costs, raw materials, inventory, insurance, and other start-up, expansion or acquisition costs. Financial assistance grants shall not exceed 50 percent of the financial package (up to ~~$15,000~~ *$10,000*) required to start up, expand or acquire a business. The administrator of the DVR or IDB will reserve the authority to waive the 50 percent or ~~$15,000~~ *$10,000* criteria in individual circumstances.

ITEM 3. Amend subrule 56.6(1) as follows:

56.6(1) Grant awards. Financial assistance grants may be awarded for up to 50 percent (not to exceed ~~$15,000~~ *$10,000*) of the equipment or working capital needed to start, expand, or acquire a business as defined in the sources and uses statement form. The remaining 50 percent of equipment or working capital needed to start, expand, or acquire a business shall be provided by an applicant through conventional financing or other sources. Working capital may include, but is not limited to, design and printing of marketing materials, advertising, rent (up to six months), direct mail postage, raw materials, inventory, insurance (up to six months), and other start-up, expansion, or acquisition costs. It is a goal of the program that program funds assist an applicant in also securing financing from a commercial or private source.

ITEM 4. Amend the implementation clause at the end of **261—Chapter 56** as follows:

These rules are intended to implement ~~1994 Iowa Acts, chapter 1199, section 28.~~ *Iowa Code section 15.313(2)"g."*

ARC 7434A

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 amends Chapter 68, "Export Trade Assistance Program," Iowa Administrative Code.

Companies may access the ETAP program three times per year. However, existing program rules prohibit companies from seeking assistance under this program for more than two trade shows during a state fiscal year. This amendment would eliminate the two trade show restriction, but would retain the general limitation of three uses per year. Increased funding for fiscal year 1998 for the program makes it possible for eligible businesses to seek funding for qualifying trade shows. In addition, at the legislature's direction there was an organizational change last fiscal year in the Department's International Division which expanded the Division's duties to allow a new emphasis on agricultural and food products. Historically, the International Division worked primarily with manufacturers. This new focus has created a new clientele for the Division, and to meet the needs of these clients, it is important not to limit the number of trade shows they attend during a fiscal year. The proposed amendments also update the Iowa Code reference of the program's implementation statute.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 2, 1997. Interested persons may submit written or oral comments by contacting Mike Doyle, International Division, Department of

Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4729.

A public hearing to receive comments about the proposed amendments will be held on September 2, 1997, at 10:30 a.m., at the above address in the Business Finance Conference Room on the first floor. Individuals interested in providing comments at the hearing should contact Mike Doyle by 4 p.m. on August 29, 1997, to be placed on the hearing agenda.

These amendments are intended to implement 1997 Iowa Acts, House File 655, section 1, subsection 4, paragraph "c."

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 68** by striking (75GA, ch1201) and inserting (77GA,HF655) wherever it appears.

ITEM 2. Amend 261—68.7(75GA,ch1201) as follows:

261—68.7~~(75GA,ch1201)~~*(77GA,HF655)* Limitations. A participant in the export trade assistance program shall not utilize the program's benefits more than three times during the state's fiscal year, during the same fiscal year. Participants shall not utilize export trade assistance program funds for participation in the same trade show during two consecutive state fiscal years, or for participation in the same trade show more than two times. Participants shall not utilize export trade assistance program funds for participation in multiple trade shows in the same country during the same state fiscal year. ~~Participant's utilization of export trade assistance program funds will be limited to two trade shows during a state fiscal year.~~

ITEM 3. Amend 261—68.8(75GA,ch1201) as follows:

261—68.8~~(75GA,ch1201)~~*(77GA,HF655)* Forms. The following forms are available from the department and will be used by the department in the administration of the export trade assistance program:

1. ETAP application form,
2. ETAP final report form,
3. Reimbursement agreement.

ITEM 4. Amend the implementation clause at the end of **261—Chapter 68** as follows:

These rules are intended to implement ~~1994 Iowa Acts, chapter 1201, section 1, subsection 4, paragraph "c."~~ *1997 Iowa Acts, House File 655, section 1, subsection 4, paragraph "c."*

ARC 7447A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Termination

Pursuant to the authority of Iowa Code section 272.2(15), the Board of Educational Examiners hereby terminates the rule making initiated by Notice of Intended Action published in the Iowa Administrative Bulletin on November 6, 1996, as **ARC 6850A**, proposing to amend 282—Chapter 11, "Complaints—Rules of Practice and Procedure Before the Board," in accordance with 1996 Iowa Acts, chapter 1215, section 46.

These proposed amendments were published to solicit comments. The Board also requested an Attorney General's opinion on two of the proposed amendments. Based on the comments received in writing and at the public hearing which suggested changes in the rule proposal and because of the delay in receiving a response from the Attorney General, the Board terminates the rule making.

ARC 7454A

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.173(12); 1995 Iowa Acts, chapter 195, section 37; and 1997 Iowa Acts, Senate File 473, section 12, the Environmental Protection Commission hereby proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

1995 Iowa Acts, chapter 195, established new regulatory requirements for livestock feeding operations and required the Department to adopt administrative rules on a variety of environmental regulatory issues relating to such operations. That Act also required that the Department consult with representatives of livestock producers groups and other agencies and interest groups. The Animal Agriculture Consulting Organization (AACO) was formed as a result, and that group conducted public meetings to obtain public comments and discuss detailed recommendations for specific administrative rules. Comprehensive animal feeding operation rules were adopted and became effective March 20, 1996, as a result.

Since that time, AACO and the Department have continued to meet and consult to address additional issues or concerns relating to animal manure management. In addition, 1997 Iowa Acts, Senate File 473, was enacted relating to concerns with animal feeding operations and manure management in proximity to agricultural drainage wells (ADW). Two subcommittees were formed and met in late 1996 and early 1997. The first subcommittee focused on manure management plans, manure storage structure design standards, erosion control, hydrology, education and regional differences. The second subcommittee focused on ADWs, inspections and monitoring wells. AACO published and transmitted its recommendations to the Department on February 28, 1997, and recommended among other things that AACO and the Department continue to meet to develop specific amendments. Following numerous meetings, the Department presented the AACO recommendations for rule changes, along with its recommendations, to the Commission on July 21, 1997, at which time the substance of this Notice of Intended Action was approved.

The proposed amendments cover the general subjects of:

- Prohibiting construction of earthen manure storage structures, and spray irrigation of manure, in ADW drainage areas;
- Design standards for concrete manure storage structures;
- Earthen manure storage structure design standards, including soil testing and permeability, liner design, erosion control methods, and hydrology; and

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

◦ Technical amendments.

The proposed amendments represent a consensus between AACO and Department staff, with the exception of the following:

◦ The AACO recommendations include a proposal to allow construction of earthen manure storage structures below the groundwater table if specific design and operational controls are followed. The Department proposal does not allow construction below the groundwater table. This issue is reflected in Items 1, 10 and 11.

◦ The AACO proposal allows artificial lowering of the groundwater table by both gravity flow and active (mechanical) methods. The Department proposal allows artificial lowering of the groundwater table only by gravity flow and other permanent, nonmechanical methods. This issue is reflected in Items 12 and 13, paragraph "b."

◦ The AACO proposal for determining the groundwater table, in the Department's view, overly emphasizes the use of preconstruction monitoring wells, and is unclear. The Department's proposal makes it clear that preconstruction monitoring is only one of several factors that are used to determine the groundwater table. This issue is reflected in Items 12 and 13, paragraph "c."

The public is invited to comment on all aspects of the proposed amendments. Alternative language is included in this Notice, Items 1, 10, 11, 12, and 13, to reflect the options of AACO and the Department on the above areas of difference. The public is invited to comment on which options should be adopted.

Any interested persons may make written suggestions or comments on the proposed amendments on or before September 11, 1997. Written comments should be directed to Ubbo Agena, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034, fax (515)281-8895.

Public hearings, at which times comments may be submitted orally or in writing, will be held on:

◦ September 2, 1997, at 7 p.m. at the Oelwein Community Center, 25 W. Charles Street, Oelwein, Iowa;

◦ September 3, 1997, at 7 p.m. at the Super 8 Motel Conference Room, 119 Westview Drive (Highway 1, North), Washington, Iowa;

◦ September 4, 1997, at 7 p.m. at the American State Bank Meeting Room, 1000 Jeffreys Drive, Osceola, Iowa;

◦ September 8, 1997, at 7 p.m. at the Cherokee Community Center Auditorium, 530 W. Bluff Street, Cherokee, Iowa;

◦ September 9, 1997, at 7 p.m. at the First National Bank (downstairs meeting room), 211 First Avenue NW, Hampton, Iowa; and

◦ September 11, 1997, at 7 p.m. at the Elks Club, 501 Poplar Street, Atlantic, Iowa.

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.

These amendments may impact small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1, and 1997 Iowa Acts, Senate File 473.

The following amendments are proposed.

ITEM 1. Amend rule **567—65.1(455B)** by adding the following new definitions in alphabetical order:

"Agricultural drainage well" means a vertical opening to an aquifer or permeable substratum which is constructed by any means including but not limited to drilling, driving, digging, boring, augering, jetting, washing, or coring and which is capable of intercepting or receiving surface or subsurface drainage water from land directly or by a drainage system.

"Agricultural drainage well area" means an area of land where surface or subsurface water drains into an agricultural drainage well directly or through a drainage system connecting to the agricultural drainage well.

"Low permeability"* means a permeability less than or equal to 10^{-7} centimeters per second.

(*AACO option, related to construction of earthen structures below the groundwater table; this definition is unnecessary if the department's option is adopted. See Items 10 and 11.)

ITEM 2. Amend subrule **65.2(10)** by adding a new paragraph "g" as follows:

g. Agricultural drainage wells. Manure shall not be applied by spray irrigation equipment on land located within an agricultural drainage well area.

ITEM 3. Amend subrule **65.6(1)**, paragraph "b," as follows:

b. Except as provided in subrule 65.6(2), a confinement feeding operation beginning construction, installation or modifications after ~~the effective date of these rules~~ *March 20, 1996,* shall obtain a construction permit prior to beginning construction, installation of an animal feeding operation structure used in that operation or prior to beginning significant modifications in the volume or manner in which the manure is stored ~~or~~ if any of the following conditions exist:

(1) The confinement feeding operation uses an aerobic ~~system~~ *structure,* anaerobic lagoon or earthen manure storage basin.

(2) to (5) No change.

ITEM 4. Amend rule 567—65.7(455B), introductory paragraph, as follows:

567—65.7(455B) Construction. ~~Iowa Code Supplement section 455B.173(13) prohibits an~~ *An* applicant for a construction permit ~~from beginning~~ *shall not begin* construction at the location of a site planned for the construction of an animal feeding operation structure, *including an aerobic structure,* until the person has been granted a permit for the construction of the structure by the department. For purposes of these rules:

ITEM 5. Amend subrule **65.8(1)**, paragraphs "f," "g," and "i," as follows:

f. For a manure storage structure in which manure is stored in a liquid or semiliquid form or for an egg washwater storage structure, an engineering report, construction plans and specifications, prepared by a ~~registered~~ *licensed* professional engineer or by Natural Resources Conservation Service personnel, that detail the proposed structures.

g. A report on soil borings in the area of the aerobic structure, anaerobic lagoon, egg washwater storage structure ~~(if earthen)~~, or ~~earthen~~ manure storage basin, *as described in subrule 65.16(6),* if ~~a~~ *an earthen* lagoon, structure or basin is being constructed. A minimum of three borings ~~are~~ *is* required for structures of ½ acre *water surface area* or less and four borings or more for structures larger than ½ acre. *For structures larger than four acres water surface area, one additional boring per acre is required for each acre above four acres.* ~~More borings may be required by the department if the borings show inconsistent soils.~~ All borings shall be taken to a minimum of 10 feet below the bottom elevation of the proposed structure and one boring must be taken to 25 feet below the bottom.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

i. If the confinement feeding operation contains three or more animal feeding operation structures, a ~~registered~~ *licensed* professional engineer shall certify that either the construction of the structure will not impede the drainage through established drainage tile lines which cross property boundary lines or that if the drainage is impeded during construction, the drainage tile will be rerouted to reestablish the drainage prior to operation of the structure.

ITEM 6. Amend subrule 65.15(1), paragraphs "b" and "c," as follows:

b. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon or earthen manure storage basin shall be removed within 50 feet of the projected outside edge of the berm and within the projected site of the structure including under the berm. Drainage tile lines discovered upgrade from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drain tile lines installed at the time of construction to lower a ~~perched~~ groundwater ~~layer~~ *table* may remain where located. A device to allow monitoring of the water in the drain tile lines installed to drain the ~~perched~~ groundwater ~~layer~~ *table* and a device to allow shutoff of the drain tile lines shall be installed if the drain tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon or earthen manure storage basin is located. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, ~~bentonite~~ *Portland cement concrete grout* or similar materials, or reconnected to upgrade tile lines.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgrade from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. Drain tile lines installed at the time of construction to lower a ~~perched~~ groundwater ~~layer~~ *table* may remain where located. A device to allow monitoring of the water in the drain tile lines installed to drain the ~~perched~~ groundwater ~~layer~~ *table* and a device to allow shutoff of the drain tile lines shall be installed if the drain tile lines do not have a surface outlet accessible on the property where the ~~aerobic structure, anaerobic lagoon or earthen manure storage basin~~ *formed manure storage structure* is located.

ITEM 7. Amend subrule 65.15(2), paragraphs "c" and "d," as follows:

c. The drainage tile lines discovered near an aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin, other than an egg washwater storage structure, shall be removed within 50 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the aerobic structure, anaerobic lagoon or earthen manure storage basin shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgrade tile lines. Drain tile lines that were installed at the time of construction to lower a ~~perched~~ groundwater ~~layer~~ *table* may either be avoided if the location is known or may remain at the location if discovered.

d. By March 20, 1997, the owner of an aerobic structure, anaerobic lagoon, earthen manure storage structure or an earthen waste slurry storage basin, that is part of a confinement feeding operation with a construction permit granted before the date these rules are effective, including those granted before December 31, 1992, shall install a device to allow monitoring of the water in the drain tile lines installed to lower the ~~perched~~ groundwater ~~layer~~ *table* and to allow shutoff of the drain tile lines if the drain tile lines do not have a surface outlet accessible on the property where the aerobic structure, anaerobic lagoon, earthen manure storage basin or earthen waste slurry storage basin is located.

ITEM 8. Amend subrule 65.15(3), paragraph "b," as follows:

b. The drainage tile lines discovered may be removed within 50 feet of the outside edge of the berm. Drainage tile lines discovered upgrade from the structure may be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drain tile lines that were installed at the time of construction to lower a ~~perched~~ groundwater ~~layer~~ *table* may either be avoided if the location is known or may remain at the location if discovered. All other drainage tile lines discovered may be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgrade tile lines. The confinement feeding operation should either obtain permission from an adjoining property owner or trench up to the boundary line of the property if the distance of 50 feet would require the inspection trench to go onto the adjoining property.

ITEM 9. Rescind subrule 65.15(6) and insert the following new subrule:

65.15(6) Soil testing for earthen structures. All subsurface soil classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90. Soil borings shall be taken to determine subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for the anaerobic lagoon, aerobic structure, or earthen manure storage basin, and shall be conducted by a qualified person normally engaged in soil testing activities. Data from the soil borings shall be submitted and shall include a description of the geologic units encountered, and a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the anaerobic lagoon, aerobic structure, or earthen manure storage basin. All soil borings shall be taken by a method that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil borings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

a. A minimum of three borings is required for an anaerobic lagoon, aerobic structure, or earthen manure storage basin ½ acre water surface area or less, and four or more for an anaerobic lagoon, aerobic structure, or earthen manure storage basin larger than ½ acre. For an anaerobic lagoon, aerobic structure, or earthen manure storage basin larger than 4 acres water surface area, one additional boring per acre is required for each acre above 4 acres surface area.

b. All borings shall be taken to a minimum depth of ten feet below the bottom elevation of the anaerobic lagoon, aerobic structure, or earthen manure storage basin.

c. At least one boring shall be taken to a minimum depth of 25 feet below the bottom elevation of the anaerobic lagoon, aerobic structure, or earthen manure storage basin or into bedrock, whichever is shallower.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

d. Upon abandonment of the soil bore holes, all soil bore holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

ITEM 10. (DNR proposal) Amend subrule 65.15(7), paragraph "a," as follows:

a. *Groundwater table.* A minimum separation of four feet between the ~~lagoon or basin seal~~ *top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor* and the ~~maximum~~ groundwater table is recommended; however, in no case shall the top of the ~~lagoon or basin seal~~ *liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor* be below the ~~maximum~~ groundwater table. If the ~~maximum anticipated~~ groundwater table is less than two feet below the ~~bottom of the lagoon or basin~~ *top of the liner on an earthen aerobic structure, anaerobic lagoon, or earthen manure storage basin floor,* the ~~lagoon or basin~~ *aerobic structure, anaerobic lagoon, or earthen manure storage basin* shall be provided with a synthetic liner *as described in 65.15(12)"f."* ~~Provisions for the permanent artificial lowering of perched groundwater layers on a site may be considered on a case-by-case basis.~~

ITEM 11. (AACO proposal) Rescind subrule 65.15(7), introductory paragraph and paragraph "a," and insert the following new paragraphs:

65.15(7) Hydrology. The following requirements shall apply to confinement feeding operations which are required to obtain a construction permit.

a. Groundwater table. A minimum separation of four feet between the top of the liner on the aerobic structure, anaerobic lagoon, or earthen manure storage basin floor and the groundwater table is recommended. The top of the liner on the aerobic structure, anaerobic lagoon, or earthen manure storage basin floor shall be at least two feet above the groundwater table unless the applicant selects in the permit application and implements one of the following options to manage the groundwater movement during operation of the manure storage structure. In addition, the permit application shall include a description of the methods that will be used to manage the groundwater movement during and following construction of the aerobic structure, anaerobic lagoon, or earthen manure storage basin.

(1) If the groundwater table is less than two feet below but not above the top of the liner on the aerobic structure, anaerobic lagoon, or earthen manure storage basin floor, the aerobic structure, anaerobic lagoon, or earthen manure storage basin shall be provided with a synthetic liner as described in 65.15(12)"f."

(2) For an anaerobic lagoon or earthen aerobic structure, the groundwater table shall not be above 50 percent of the minimum design volume as defined in rule 23.5(1)"b." During removal of manure from the lagoon, the manure liquid level shall not be lowered more than 12 inches below the monitored groundwater table as measured by the monitoring system. The confinement feeding operation shall install a monitoring system to determine the monitored groundwater table and anaerobic lagoon or earthen aerobic structure liquid levels. This option shall not apply to an earthen manure storage basin.

(3) If the groundwater table is less than two feet below the top of the liner on the aerobic structure, anaerobic lagoon, or earthen manure storage basin floor, the groundwater table shall be below the highest level of the first continuous layer of low permeability soil located below the normal soil surface. The first continuous layer of low permeability soil shall be at least five feet thick and extend to two feet below the bottom of the aerobic structure, anaerobic lagoon, or earthen manure storage basin.

(4) If the groundwater table is above the bottom of the aerobic structure, anaerobic lagoon, or earthen manure storage basin, a slurry wall shall be installed to extend from the soil surface to a depth at least two feet into the first continuous layer of low permeability soil located below the normal soil surface. The layer shall be at least five feet thick and extend to at least two feet below the bottom of the aerobic structure, anaerobic lagoon, or earthen manure storage basin. A slurry wall shall consist of a bentonite amended soil, or similar impervious materials, in a trench no less than two feet wide encompassing the aerobic structure, anaerobic lagoon, or earthen manure storage basin. A slurry wall shall provide for seepage loss through the wall that is as low as practically possible. The permeability, as laboratory tested, shall be less than or equal to 10^{-7} centimeters per second. Following construction of the aerobic structure, anaerobic lagoon, or earthen manure storage basin and slurry wall, the results of a testing program which indicate the adequacy of the slurry wall shall be provided to the department in writing prior to start-up of the operation.

(5) A method approved by the department which adequately manages groundwater movement and liner integrity.

ITEM 12. (DNR proposal) Amend subrule 65.15(7) by striking paragraph "b" and replacing it with the following new paragraphs "b" and "c":

b. Permanent artificial lowering of groundwater table. The groundwater table around an anaerobic lagoon, aerobic structure, or earthen manure storage basin may be artificially lowered to levels required in paragraph "a" by using a gravity flow tile drainage system or other permanent nonmechanical system for artificial lowering of the groundwater table. Detailed engineering and soil drainage information shall be provided to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. (See subrule 65.15(1) for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.) For formed manure storage structures partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure.

c. Groundwater table. For purposes of this rule, groundwater table means the average annual high water table determined by the licensed professional engineer, and approved by the department, pursuant to this subrule. Current groundwater levels shall be measured using three temporary monitoring wells by measuring the water level seven days after installation. The borings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose. The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information shall be used to determine the average annual high water table. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.15(7)"b," the level to which the groundwater table will be lowered will be considered to represent the average annual high water table.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 13. (AACO proposal) Amend subrule 65.15(7) by striking paragraph "b" and replacing it with the following new paragraphs "b" and "c":

b. Permanent artificial lowering of groundwater table. The groundwater table around an anaerobic lagoon, aerobic structure, or earthen manure storage basin may be artificially lowered to levels required in paragraph "a" by using a tile drainage system or other permanent system for artificial lowering of the groundwater table. Detailed engineering and soil drainage information shall be provided to confirm the adequacy of the proposed permanent system to provide the drainage required. (See subrule 65.15(1) for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.) For formed manure storage structures partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure.

c. Groundwater table. For purposes of this rule, groundwater table means the average annual high water table determined by the licensed professional engineer, and approved by the department in the construction permit application, pursuant to this subrule. The approved groundwater table shall be measured using three temporary monitoring wells by measuring the water level seven days after installation. The borings required in subrule 65.15(6) may be completed as temporary monitoring wells for this purpose. The monitoring well measurements, along with evaluation of site soils for indicative features such as color and mottling, other existing water table data, and other pertinent information showing the average annual high water table shall be used to determine the groundwater table.

ITEM 14. Rescind subrule 65.15(12) and insert the following new subrule:

65.15(12) Aerobic structure, anaerobic lagoon, or earthen manure storage basin liner design and construction standards. An aerobic structure, anaerobic lagoon or earthen manure storage basin which receives a construction permit after (insert effective date of these rules) shall comply with the following minimum standards in addition to subrule 65.15(11).

a. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin contains suitable materials as determined by the soil borings taken pursuant to subrule 65.15(6), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin does not contain suitable materials as determined by the soil borings taken in subrule 65.15(6), suitable materials shall be compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches and replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of nine inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density as determined by the Standard Proctor test after compaction.

e. For purposes of this rule, suitable materials means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for anaerobic lagoon, aerobic structure, or earthen manure storage basin construction are not considered suitable materials.

f. As an alternative to the above standards, a synthetic liner may be used. The area where the proposed aerobic structure, anaerobic lagoon or earthen manure storage basin will be located shall be appropriately prepared to support the liner. Preparation of the area and selection and installation of the synthetic liner shall be conducted in accordance with requirements of U.S.D.S. Natural Resources Conservation Service Technical Guide Standard 521 Pond Sealing or other methods which provide an equivalent level of groundwater protection.

Note: DNR continues to seek information on other possible synthetic liner standards and will request persons having pertinent information on possible standards to submit such information to the department during the period the proposed rules are under public notice.

ITEM 15. Amend rule 567—65.15(455B) by adding the following new subrules:

65.15(14) Concrete standards. A concrete formed manure storage structure, other than for the storage of manure in an exclusively dry form in a roofed structure, that is part of a confinement feeding operation which receives a construction permit after (insert effective date of these rules) shall meet the minimum design and construction standards as described in this rule.

a. All concrete used in the construction of the formed manure storage structure shall have a minimum compressive strength of 4000 pounds per square inch (psi) as batched and delivered for use and meet the engineering design standards as placed. However, the minimum compressive strength for concrete used in footings shall be 3000 psi as batched and delivered for use and meet the engineering design standards as placed. All rebar used in the construction of the concrete formed manure storage structure shall be made of a minimum of grade 40 steel.

b. The floor of a concrete formed manure storage structure shall be a minimum of five inches thick. The floor of any concrete formed manure storage structure with a designed manure storage depth of 48 inches or more shall be reinforced with a minimum of either 6 × 6 × 10 × 10 steel wire mesh or #4 rebar placed a maximum of 18 inches on center in each direction, or the steel equivalent.

c. The load-bearing walls of any concrete formed manure storage structure with a designed manure storage depth of less than 120 inches shall be a minimum of 6 inches thick. The load-bearing walls of any concrete formed manure storage structure with a designed manure storage depth of 120 inches or greater shall be a minimum of 8 inches thick. The walls shall be reinforced with a minimum of either #4 rebar placed a maximum of 18 inches on center in each direction or the steel equivalent.

d. All load-bearing walls shall be formed with rigid forming systems and shall not be ground formed.

e. All construction joints of the formed manure storage structure shall be poured to prevent discontinuity of steel and concrete and have rebar placed through the joint that is properly spliced and overlaid.

65.15(15) Berm erosion control.

a. The following requirements shall apply to anaerobic lagoons, earthen aerobic structures, or earthen manure storage basins which receive a construction permit after (insert effective date of these rules):

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the anaerobic lagoon, aerobic structure, or earthen manure storage basin.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the anaerobic lagoon, aerobic structure, or earthen manure storage basin where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the anaerobic lagoon, aerobic structure, or earthen manure storage basin.

b. The owner of a confinement feeding operation with an anaerobic lagoon, earthen aerobic structure, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner.

65.15(16) Agricultural drainage wells. After May 29, 1997, a person shall not construct a new or expand an existing earthen aerobic structure, earthen anaerobic lagoon, earthen manure storage basin, earthen waste slurry storage basin, or earthen egg washwater storage structure within an agricultural drainage well area.

ITEM 16. Amend subrule 65.16(1) as follows:

65.16(1) Manure application rate general rules. A confinement feeding operation that is required to submit a manure management plan to the department under this rule shall not apply manure in excess of the nitrogen use levels necessary to obtain optimum crop yields. Nitrogen application rates shall be based on total nitrogen content of the manure unless the applicant submits calculations to show that crop usage rates based on plant available nitrogen have not been exceeded for the crop schedule submitted. Information to complete the required calculations may be obtained from the tables in this chapter, actual testing samples or from other credible sources including, but not limited to, Iowa State University, the United States Department of Agriculture, a ~~registered~~ *licensed* professional engineer, or an individual certified as a crop consultant under the American Registry of Certified Professionals in Agronomy, Crops, and Soils (ARCPACS) program, the Certified Crop Consultants (CCA) program, or the Registry of Environmental and Agricultural Professionals (REAP) program.

ITEM 17. Amend rule 567—65.17(455B) as follows:

567—65.17(455B) Construction certification. A confinement feeding operation which obtains a construction permit after March 20, 1996, shall submit to the department a certification from a ~~registered~~ *licensed* professional engineer that the manure storage structure in which manure is stored in a liquid or semiliquid form or the egg washwater storage structure was:

1. No change.
2. Supervised by the ~~registered~~ *licensed* professional engineer or a designee of the engineer during critical points of the construction;
3. Inspected by the ~~registered~~ *licensed* professional engineer after completion of construction and before commencement of operation; and
4. No change.

ARC 7423A

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 217.6, the Department of Human Services proposes to amend Chapter 99, "Support Establishment and Adjustment Services," appearing in the Iowa Administrative Code.

This amendment clarifies an existing rule regarding the process for contesting paternity establishment in response to a petition for rule making. The Department received a petition for rule making asking that the existing rule be clarified to state the alleged father may contest the paternity establishment by submitting a written statement to the address of the unit "as set forth in the notice." The current rule states the alleged father may contest the paternity establishment by submitting a written statement to the address of the unit "that issued the notice."

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 September 3, 1997.

This amendment is intended to implement Iowa Code chapter 252F.

The following amendment is proposed.

Amend rule 441—99.27(252F) as follows:

441—99.27(252F) Paternity contested. The alleged father may contest the paternity establishment by submitting, within 20 calendar days after service of the notice upon him, as provided in rule 441—99.23(252F), a written statement contesting paternity to *the address of* the unit ~~that issued~~ *as set forth in* the notice. The mother may contest paternity establishment by submitting, within 20 calendar days after the unit mailed her notice of the action or within 20 calendar days after the alleged father is served with the original notice, whichever is later, a written statement contesting paternity to *the address of* the unit ~~that issued~~ *as set forth in* the notice. When paternity is contested, or at the unit's initiative, the unit shall issue ex parte administrative orders requiring the alleged father, the mother and the child to submit to paternity testing.

ARC 7424A

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 152, "Contracting," and Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

These amendments establish an interim set of procedures for establishing rates for Rehabilitative Treatment and Supportive Services (RTSS) for the period from January 1, 1998, through June 30, 1999. Rules concerning RTSS contracts are also amended to adapt to the changes in how rates will be established and to remove obsolete references to interim certification.

A committee composed of representatives of the Department and RTSS providers have been working together to develop a rate-setting methodology for RTSS which is mutually satisfactory to providers and the Department and meets funding stream requirements.

Under these amendments, the provider and the Regional Administrator of the region which is responsible for administering the provider's contract or the Regional Administrator's designee will negotiate rates based on local conditions while continuing to meet the federal requirements for eligibility for federal financial participation. The previous intensive cost reporting system for setting rates will be avoided.

For rates for services that are currently under contract, the rate currently in effect will be the starting point for negotiation. The starting point for new services will be the weighted average rate for that service.

Adjustment of a current rate is to be based on one or more of the following factors:

(1) Changes in the Consumer Price Index for all Urban Consumers (CPI-U). Any adjustment based on changes in the CPI-U shall not exceed the amount by which the CPI-U increased during the calendar year ending December 31, 1997.

(2) Changes in a provider's allowable costs based on current actual cost data or documented projections of cost. Allowable costs are those costs not excluded pursuant to rule 441—185.104(234).

(3) Changes in program utilization that impact the per unit cost of a program. Rates shall not be adjusted based on utilization levels that are below the minimum effective utilization of 80 percent or actual (whichever is higher) of the licensed or staffed capacity (whichever is less) of the program. If actual utilization is used as a basis for adjusting a rate, the actual effective utilization for the 12-month period immediately preceding the initiation of rate negotiations shall be used.

(4) Changes in the department's expectations regarding where a service is to be delivered.

(5) Changes proposed by a provider and agreed to by the department regarding where a service is to be delivered.

(6) Loss of a grant by a provider when the grant amount had previously been used to offset expenses which had resulted in a lower rate for rehabilitative treatment and supportive services.

(7) Changes in state or federal laws, rules or regulations that result in a change in the costs attributable to the services in question, including minimum wage adjustments.

(8) Competitive factors between providers.

(9) Department funding availability.

Providers shall be required to document factors supporting a change from the current rate and disclose subcontracts and related party relationships.

The Health Care Financing Administration (HCFA) requires that the Department be able to tie the rate to the cost of service. For this interim process, the Department is proposing to do this by using the financial and statistical reports on which current rates are based. For rates for this time period, a provider will not have to submit another financial and statistical report. The Department will be working with providers to determine what cost reporting will be required for rates to be established after June 30, 1999.

There will have to be documentation of the basis for increasing or decreasing the current rate based on negotiation. The documentation required will vary, depending on the basis.

If the Department and the provider cannot reach agreement on a rate, a structured rate resolution process involving a mediator will be used to attempt to reach mutual agreement.

Under proposed time frames, these amendments will be presented to the Council on Human Services for adoption in October of 1997 and the rules would become effective January 1, 1998. If the amendments are adopted by the Council in October, discussion could begin prior to January, but no agreements can be finalized until the rules are effective January 1, 1998. No rates will be effective prior to February 1, 1998. All rates for services currently under contract must be negotiated and in effect by July 1, 1998. Negotiations should begin no later than May 1, 1998. If the rates are not negotiated within the required time frames and agreement is not reached by September 30, 1998, the service shall be deleted from the provider's rehabilitative treatment and supportive services contract no later than November 30, 1998.

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 September 3, 1997.

Oral presentations may be made by persons appearing at the following meeting. Written comments will also be accepted at that time.

Des Moines - September 3, 1997 9 a.m.
Hoover State Office Building
First Floor Conference Room
Des Moines, Iowa 50319

Any persons who intend to attend the 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 rule 441—152.21(234) as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—152.21(234) Contract. All providers of rehabilitative treatment and supportive services shall enter into a contract with the department. ~~Providers who have been awarded certification pursuant to 441—subrule 185.11(1) for rehabilitative treatment services shall enter into a new contract with the department effective November 1, 1993, in order to receive reimbursement from the department for rehabilitative treatment and supportive services provided. These contracts shall not be approved for more than 180 days. These contracts may be automatically extended beyond 180 days when providers have been awarded full certification pursuant to 441—subrule 185.11(2) for rehabilitative treatment services. After January 1, 1994, new providers~~ *Providers* may enter into ~~contracts~~ *a contract* for rehabilitative *treatment* and supportive services when full certification as described in 441—subrule 185.11(2) is achieved. Certification is not required if the provider is contracting only for supportive services.

ITEM 2. Amend rule 441—152.22(234) as follows:

Amend subrule 152.22(3) as follows:

152.22(3) Contract proposal development. When the regional supervisor for purchase of service determines that a *new* contract is to be developed, a project manager shall be assigned to assist in contract development and processing. The project manager shall assist the provider in the completion of the contract proposal and required fiscal information. Form 470-3051, Rehabilitative Treatment and Supportive Services Contract Face Sheet, *and Form 470-3404, Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Attachment,* shall be completed at the same time as Form 470-3052, Rehabilitative Treatment and Supportive Services Contract, or Form 470-3053, Amendment of the Rehabilitative Treatment and Supportive Services Contract, is prepared.

Amend subrule 152.22(4), first paragraph, as follows:

152.22(4) Contract proposal approval. A proposed contract shall be submitted to the assigned project manager 60 calendar days in advance of the desired effective date of the contract. *The Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Attachment, Form 470-3404, need not be completed until the completion of the rate negotiation process. Contract proposals will not be acted upon until this form is completed and attached to the contract proposal.* Submission within the time frame does not ensure the desired effective date of the contract. The applicant shall be given a notice and explanation in writing of delays in the approval process by the department.

Amend subrules 152.22(5) to 152.22(7) as follows:

152.22(5) Criteria for rejection of contract proposal. The following criteria may cause a proposed contract *or proposed contract amendment* to be rejected:

a. and b. No change.

c. Licenses or certification submitted as a condition of participation in the contract ~~application~~ process have *never been approved, or have* been revoked or suspended.

d. No change.

e. The department and the provider fail to reach agreement on negotiated rates.

The provider shall be given a notice and explanation in writing of the reasons for rejection of the contract proposal by the department within ten working days of the department decision.

152.22(6) Contract effective date. When the agreed-upon contract conditions have been met, the effective date of the contract is the first day of an agreed-upon month following signature of the director of the department or the director's designee. A contract can only be effective if signed by all parties as required in subrule 152.22(4).

~~For purposes of the transition to the rehabilitative treatment and supportive services program, contract effective dates can be adjusted to November 1, 1993, if the provider complies with all the requirements of the contract on that date.~~

152.22(7) Contract ~~termination~~ *expiration* date. The effective date of *the* contract ~~termination~~ *expiration* shall be no more than two years from the effective date of the contract.

ITEM 3. Amend rule 441—152.23(234) as follows:

Amend subrule 152.23(2) as follows:

152.23(2) Contract amendment.

a. The contract shall be amended only upon agreement of both parties *except as provided for in paragraphs 152.23(2)"b," "c," and "d."* Amendment of the Rehabilitative Treatment and Supportive Services Contract, Form 470-3053, shall be completed by the provider to amend the services being provided, *unless the amendment is being processed with a contract renewal. If the amendment is being processed with a contract renewal, the amendment can be indicated on the contract face sheet as a "contract renewal and amendment" and Form 470-3053 does not need to be submitted, as the signature page of the contract renewal can serve as the approval mechanism with authorized signatures.* A written explanation of the nature of the amendment shall be attached. *Amendments to add a new service must meet the requirements of any licensing or certification required as indicated by issuance of a current certificate of approval. Effective January 1, 1998, the department shall only approve amendments to add a service to an existing contract for which a negotiated rate has been established.*

b. Effective August 1, 1998, a contract may be unilaterally amended by the department to delete an existing service if agreement upon a negotiated rate is not reached in accordance with rule 441—185.112(234), except as provided for at 441—subrule 185.112(12). The department shall give the provider 30 days' notice of its intent to amend the rehabilitative treatment and supportive services contract between the provider and the department.

c. A contract may be unilaterally amended by the department to delete an existing service if certification or a required license for that service is revoked, denied or has been voluntarily withdrawn by the provider. The department shall give the provider ten days' notice of its intent to amend the rehabilitative treatment and supportive services contract between the provider and the department.

Amend subrule **152.23(4)**, paragraph **"a,"** as follows:

a. The department may terminate the contract upon ten days' notice for cause except in the event of revocation of licensure, *certification* or imminent danger to clients, in which case the contract shall be terminated immediately upon notice. The provider or the department may terminate this contract without cause upon 30 days' notice. Notice of termination shall be provided by certified mail.

Further amend subrule **152.23(4)**, paragraph **"b,"** by adding the following <u>new</u> subparagraph (5).

(5) Failure to reach agreement on negotiated rates within 130 days of initiating rate negotiations in accordance with rule 441—185.112(234).

ITEM 4. Amend rule **441—185.101(234)** by adding the following <u>new</u> definitions in alphabetical order:

"Department" means the Iowa department of human services.

"Host region" means the department region which is responsible for administering the provider's contract with the department to provide rehabilitative treatment and supportive services.

"Negotiated rate" means the rate of payment established by the department as a result of negotiations between the provider and the department based upon the allowable reasonable and necessary costs of service provision.

"Rate resolution process" means a time-limited structured process involving an independent mediator to facilitate discussions with the goal of producing mutual agreement when the department and the provider have been unable to reach agreement on a rate during the rate negotiation process.

ITEM 5. Rescind and reserve rule **441—185.108(234)**.

ITEM 6. Amend 441—Chapter 185 by adding the following new rule.

441—185.112(234) Interim determination of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective during the time period beginning January 1, 1998, to June 30, 1999, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), subrule 185.112(6), or subrule 185.112(12) or until the service is terminated in accordance with subrule 185.112(4).

185.112(1) Negotiation of rates. Rates for services to be made effective on or after February 1, 1998, must be established in accordance with this subrule except as provided for at subrule 185.112(12).

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998, through June 30, 1999.

b. The scope of these negotiations is limited solely to the rate to be paid for each service.

(1) No other items, such as, but not limited to, changes in staff qualifications, service definition, required components, allowable costs or any licensing, certification or any contract requirement can be the subject of negotiations or used as a basis for changing rates except as provided for at subparagraph 185.112(1)"f"(7).

(2) The initial negotiation of rates pursuant to rule 441—185.112(234) shall encompass all of the services in the existing rehabilitative treatment and supportive services contract.

c. The regional administrator of the host region is responsible for the negotiation of rates for each provider whose contract for rehabilitative treatment and supportive services is administered by the host region, regardless of where services are provided.

(1) The host region shall take into consideration the other regions served by a provider when negotiating a rate for a service provided in multiple regions.

(2) When a service is provided only in a nonhost region, the two regional administrators shall determine which region will negotiate the rate for that service.

d. The regional administrator of the host region and the provider are mutually responsible for initiating the rate negotiation process. Negotiations should begin no later than May 1, 1998. Negotiations may be conducted in a manner acceptable to both parties but shall be conducted face to face upon the request of either party.

e. The provider must disclose any and all relevant subcontractual and related party relationships related to the provision of rehabilitative treatment or supportive services at the initiation of the rate negotiation process.

(1) This disclosure shall include all current and any proposed subcontracts that relate to the direct provision of rehabilitative treatment or supportive services for which rates are being negotiated. The provider shall make a written statement disclosing any current or proposed subcontracts that may relate to the rehabilitative treatment and supportive services for which rates are being negotiated.

(2) This disclosure shall include all transactions with related parties as defined at paragraph 185.105(11)"c" or 441—subrule 152.2(18) that may relate to the rehabilitative treatment and supportive services for which rates are being negotiated. The provider shall make a written statement disclosing any current related party transactions that may relate to the rehabilitative treatment and supportive services for which rates are being negotiated. This disclosure is only required when either the department or the provider seeks to establish a rate different from the rate used as the starting point for rate negotiations.

(3) Failure by a provider to comply with these requirements shall be considered a violation in accordance with subrule 185.12(6) and may result in sanctions being imposed or the withholding of payments.

f. For those services with a nonzero payment rate in effect on December 31, 1997, the rate in effect on December 31, 1997, shall be used as the starting point for rate negotiations. For rates to be effective on or after February 1, 1998, the department and the provider by mutual written agreement may either leave the rate in effect as of December 31, 1997, at its current level or they may raise or lower the rate in effect as of December 31, 1997. Adjustment of the rate in effect as of December 31, 1997, shall be based on the following factors:

(1) Changes in the Consumer Price Index for all Urban Consumers (CPI-U). Any adjustment based on changes in the CPI-U shall not exceed the amount by which the CPI-U increased during the calendar year ending December 31, 1997.

(2) Changes in a provider's allowable costs based on current actual cost data or documented projections of cost. Allowable costs are those costs not excluded pursuant to rule 441—185.104(234).

(3) Changes in program utilization that impact the per unit cost of a program. Rates shall not be adjusted based on utilization levels that are below the minimum effective utilization of 80 percent or actual (whichever is higher) of the licensed or staffed capacity (whichever is less) of the program. If actual utilization is used as a basis for adjusting a rate, the actual effective utilization for the 12-month period immediately preceding the initiation of rate negotiations shall be used.

(4) Changes in the department's expectations of where a service must be delivered.

(5) Changes proposed by a provider and agreed to by the department of where a service must be delivered.

(6) Loss of a grant by a provider when the grant amount had previously been used to offset expenses which had re-

HUMAN SERVICES DEPARTMENT[441](cont'd)

sulted in a lower rate for rehabilitative treatment and supportive services.

(7) Changes in state or federal laws, rules or regulations that result in a change in the costs attributable to the services in question, including minimum wage adjustments.

(8) Competitive factors between providers.

(9) Department funding availability.

g. Existing providers who currently have a contract to provide a service where the payment rate has been established at zero prior to January 1, 1998, may use the weighted average rate established pursuant to paragraph 185.112(2)"c" for that service in lieu of their existing rate as the starting point for negotiations unless they have a nonzero rate for a similar service. If a provider has a nonzero rate for a similar service, the starting point for rate negotiations shall be established pursuant to paragraph 185.112(2)"a" or "b."

h. Negotiated rates are subject to the following additional limitations.

(1) For public agencies, profit or other increment above cost is not allowed (see subrule 185.112(5)). For private entities there is no provision for or prohibition of profit in these rules.

(2) Rates for cotherapy services continue to be subject to the limitations specified at subparagraph 185.106(4)"c"(2).

(3) Rates shall not exceed any rate ceiling established or authorized by the legislature.

(4) Rates to be paid may not exceed the limits established by 441—subrule 152.2(17).

i. The basis for any and all changes from the rate used as the starting point for negotiations shall be documented. A copy of all documentation shall be attached to the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, when it is submitted to the bureau of purchased services for implementation.

j. Only the regional administrator of the host region may approve the rates negotiated for a provider.

(1) This approval shall be based upon the historical cost basis used for establishing those rates and the documented factors justifying variation from those historical costs.

1. Payment rates in effect as of December 31, 1997, shall be considered to be sufficiently documented and no justification is required for continuing a rate in effect as of December 31, 1997.

2. Payment rates set at the weighted average rate for a service shall be considered to be sufficiently documented and no justification is required for establishing or maintaining a rate at the weighted average level.

(2) After both the provider and the regional administrator of the host region have signed the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, it shall be submitted to the bureau of purchased services along with the written disclosure required at paragraph 185.112(1)"e" and any necessary documentation to support changes in the rate from the historical cost base as required by paragraph 185.112(1)"h."

(3) The effective date of the rate for a new service shall be the effective date of a new contract or the effective date of the contract amendment adding that new service to an existing contract unless a later effective date is agreed to by both parties.

(4) The effective date of the rate for an existing service shall be the first of the month following the month in which the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, and all necessary supportive documentation and disclosures of purchased services are received by the bureau by the fifteenth of the month.

k. Once a negotiated rate is established based on the provisions of this subrule it shall not be changed or renegotiated during the time period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the regional administrator of the host region based upon the factors delineated at paragraph 185.112(1)"f."

(2) In accordance with paragraph 185.112(6)"b."

185.112(2) New services. When a new provider contracts to provide a rehabilitative treatment or supportive service or an existing provider adds a new rehabilitative treatment or supportive service on or after January 1, 1998, the rate for the new service shall be established based on a payment rate negotiated in accordance with subrule 185.112(1) using the weighted average rate for that service in lieu of an existing rate as the starting point for negotiations.

a. If an existing provider already has a rate for a similar service and wishes to establish a second rate for that service, the starting point for rate negotiations for the second rate shall be the starting point used in negotiations for the provider's already established rate for that similar service.

b. If an existing provider has more than one rate for a similar service and wishes to establish an additional rate for that service, the starting point for rate negotiations shall be established by the regional administrator of the host region and shall be one of the following: the starting point of that provider's established rate for the similar service most closely resembling the proposed service, or the simple average of the starting points of all of the provider's established rates for similar services.

c. The weighted average rate is the weighted average rate for each service as of July 1, 1997, as previously established in accordance with subrule 185.109(1).

d. For those services where no weighted average rate has been established because there are less than four rates existing for that service or for newly developed rehabilitative treatment and supportive services, the department shall determine the cost of that service by requiring financial and statistical reports reflecting the costs for the new service to be submitted in accordance with rules 441—185.102(234) to 441—185.107(234). Initial projected rates established in accordance with this subrule shall become effective in accordance with subrule 185.107(2).

The report of actual costs pursuant to paragraph 185.103(1)"b" shall be used only to establish the historical costs of the new service which shall be used as the starting point in the rate negotiation process. The negotiated rate established in accordance with subrule 185.112(1) based upon the actual cost report shall become effective in accordance with paragraph 185.112(1)"j."

185.112(3) Rate resolution process. The rate resolution process may be used when the department and a provider are unable to agree upon a rate for a service within 60 days of initiating rate negotiations.

a. This process involves obtaining an independent mediator who is agreeable to both parties.

b. The cost of the mediator shall be borne equally by the provider and the department. Neither party to the mediation shall be liable for paying for more than that party's share of the cost for eight hours of mediation unless this is mutually agreed upon prior to initiation of the mediation process.

c. The rate resolution process must be concluded within 60 days of its initiation.

d. The mediator shall not make rate-setting decisions. The role of the mediator is to facilitate discussions between the parties in an effort to help the parties reach a mutual agreement.

185.112(4) Failure to reach agreement on rates. In the event the department and the provider are unable to reach agreement on a rate, the following procedures apply:

a. If the department and an existing provider are unable to reach agreement on a negotiated rate for an existing service with a published rate within 60 days of initiating negotiations or by June 30, 1998, whichever comes first, the rate resolution process may be used.

(1) Whether or not the rate resolution process is used, if agreement is not reached by September 30, 1998, the service shall be deleted from the provider's rehabilitative treatment and supportive services contract no later than November 30, 1998.

(2) If agreement is reached, the rate shall become effective in accordance with the provisions of paragraph 185.112(1)"i."

b. In the event the department and an existing provider are unable to reach agreement on a rate for a new service or an existing service without a published rate within 60 days of initiating rate negotiations, the rate resolution process may be used.

(1) If the rate resolution process is not used, and agreement is not reached within 120 days of initiating negotiations, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.

2. For existing services without a rate, the contract shall be amended to delete this service from the contract.

(2) If the rate resolution process is used and no rate is agreed upon within 60 days of referral to the rate resolution process, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.

2. For existing services without a rate, the contract shall be amended to delete this service from the contract.

3. If agreement is reached within the required time frames in either of the above situations, the rate shall become effective in accordance with the provisions of paragraph 185.112(1)"i."

c. In the event the department and a new provider are unable to reach agreement on a rate for a service within 60 days of initiating rate negotiations, the rate resolution process may be used. If no rate is agreed upon within 60 days of initiation of the rate resolution process, no rate shall be established and the services in question shall not be a part of any approved contract for rehabilitative treatment and supportive services. In the event that the department and a new provider cannot reach agreement on any rates, the contract shall be denied.

d. In all cases, a service for which a negotiated rate has not been established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), on or before September 30, 1998, shall be terminated from the provider's contract for rehabilitative treatment and supportive services no later than November 30, 1998.

e. The department shall not be liable for payment for any rehabilitative treatment or supportive service that does not have a rate established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), that is provided after November 30, 1998.

185.112(5) Public agencies. Public agencies shall be required to demonstrate their compliance with paragraph 185.106(3)"d."

185.112(6) Interruptions in a program.

a. If a provider assumes the delivery of a program from a related party provider as defined at paragraph 185.105(11)"c" or 441—subrule 152.2(18), the rate for the new provider shall remain the same as the rate established for the former provider. The rate for the new provider shall also remain the same as for the former provider if the difference between the former and the new provider is a change in name or a change in the legal form of ownership (i.e., a change from sole proprietorship to corporation).

b. Except as provided in paragraph "a" above, when a new provider assumes the delivery of a program from another provider, all rates for the services previously provided by either provider shall need to be reviewed and may be renegotiated at the request of either party.

c. If a provider ceases to contract for and provide a service or program on or after July 1, 1996, and prior to establishing a negotiated rate in accordance with subrule 185.112(1), decides to again contract for and provide that program or service, the nonzero rate in effect when the contract ceased shall be used as a starting point in negotiating a new rate in accordance with subrule 185.112(1) for that service.

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service and has a contract for the service in effect prior to June 30, 1999, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and prior to June 30, 1999, decides to again contract for and provide the program or service, the rate shall be established at the rate in effect when service was interrupted.

f. Rates for services interrupted prior to July 1, 1996, shall be treated as a new service in accordance with subrule 185.112(2).

185.112(7) Maintenance of fiscal records. Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3)"d," and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.112(8) Certified audits. Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.112(9) Billing. Subrule 185.106(4) remains in effect for billing purposes.

185.112(10) Rates for services provided on or after July 1, 1999. In absence of an alternative rate-setting methodology effective July 1, 1998, rules 441—185.102(234) to 441—185.107(234) shall be the basis of establishing rates to be effective for services provided on or after July 1, 1999.

a. In absence of a new rate-setting methodology set forth in rule, all providers, regardless of when their fiscal year ends, shall submit a Financial and Statistical Report, Form 470-3049, for the time period July 1, 1998, to December 31, 1998, based on the cost principles set forth in rules 441—185.101(234) to 441—185.107(234). This report shall be submitted no later than March 31, 1999. Rates based on reports submitted pursuant to this paragraph shall be effective no earlier than July 1, 1999, and no later than August

HUMAN SERVICES DEPARTMENT[441](cont'd)

1, 1999, when the report is sufficient for the establishment of rates. However, if a provider with a contract in effect as of June 30, 1996, has a fiscal year which ends at the end of January, February, or March 1999, the provider shall submit the financial and statistical report for the time period July 1, 1998, through the end of the provider's fiscal year, 1999. The report shall be submitted no later than three months after the close of the provider's established 1999 fiscal year. Rates shall be effective no later than the first day of the second full month after receipt by the project manager of a complete financial and statistical report.

b. Failure by providers to submit the report within the established time frames without written approval from the chief of the bureau of purchased services or the chief's designee shall be cause to reduce the payment to 75 percent of the rate in effect June 30, 1999, or the weighted average rate as of July 1, 1997, whichever is less. Approval for an extension for the submission shall be granted only when the provider can demonstrate that there have been catastrophic circumstances prohibiting timely submission.

c. If an extension is granted, the rate in effect as of June 30, 1999, shall be continued until the new rate is established. If a new rate is not established by the date set forth by the chief of the bureau of purchased services or the chief's designee in the notice of approval of the request to extend the time frame for submission of the Financial and Statistical Report, Form 470-3049, the provider's rate in effect as of June 30, 1999, shall be reduced to 75 percent of the rate in effect June 30, 1999, or the weighted average rate as of July 1, 1997, whichever is less, until such time as the new rate can be established.

d. If a provider has submitted the report on time, but a rate cannot be established within four months of the original due date due to incomplete or erroneous information, payment shall be reduced to 75 percent of the rate in effect June 30, 1999, or the weighted average rate as of July 1, 1997, whichever is less, until the new rate can be established.

e. All subsequent financial and statistical reports shall be submitted within the time frames established pursuant to subrule 185.103(1).

f. Rates for individual providers shall be established pursuant to subrule 185.103(7) with the exception of rates to be in effect July 1, 1999. Individual providers shall submit the information required by subrule 185.103(7) to the department no later than March 31, 1999, to establish rates to be effective July 1, 1999. Rates shall be recalculated annually on the anniversary of the effective date of the contract from that point forward.

185.112(11) Liability for payment. The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

185.112(12) Providers under an exception to policy for establishing rates. When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) or 441—185.109(234) by the director of the department prior to January 1, 1998, the exception shall continue in effect as written for any provider not located in the state of Iowa and for which the exception was based upon another state's requirement that providers be paid the same rate they are paid for clients from the provider's home state. The exceptions for all other providers shall terminate and the conditions leading to the exceptions being approved shall be considered in the rate establishment negotiations.

185.112(13) Review of rate negotiations. Rate negotiations are considered rate determinations and shall be handled in accordance with the provisions for rate determinations at rule 441—152.3(234). Requests for review of rate determinations shall be granted only if the rate resolution process as defined at subrule 185.112(3) has been used.

ARC 7448A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 135C.14, the Department of Inspections and Appeals proposes to amend Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)"; Chapter 63, "Residential Care Facilities for the Mentally Retarded"; Chapter 64, "Intermediate Care Facilities for the Mentally Retarded"; and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

The amendments implement 1997 Iowa Acts, Senate File 523, which requires dependent adult abuse and criminal history record checks for anyone employed in a health care facility after July 1, 1997.

Interested persons may make written comments or suggestions on the amendments on or before September 2, 1997. Written materials should be addressed to the the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0087; fax (515) 242-6863.

A public hearing will be held on September 2, 1997, at 9 a.m. in the Director's Conference Room, Sixth Floor, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

The substance of these amendments was also Adopted and Filed Emergency and is published herein as ARC 7449A. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code section 135C.33 as amended by 1997 Iowa Acts, Senate File 523.

ARC 7443A

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.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 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 4, "Practice and Procedure Before the Racing and Gaming Commission," Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

Item 1 moves language from Chapter 25 into Chapter 4.

Item 2 changes the definition of "Gaming official" to refer to racing and racetrack enclosures as well as riverboat.

Item 3 gives the Board authority to suspend a license of a person if that person is currently under suspension or in bad standing in another jurisdiction.

Item 4 more clearly defines who an applicant is.

Item 5 changes an inappropriate Code reference.

Item 6 rescinds the rules moved to Chapter 4.

Any person may make written suggestions or comments on the proposed amendments on or before September 2, 1997. Written material should be directed to the Racing and Gaming Commission, Suite B, 717 E. Court, 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 September 2, 1997, at 9 a.m. in the office of the Racing and Gaming Commission, Suite B, 717 E. Court, 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 491—Chapter 4 by adding the following new rules and renumbering 491—4.3(99D,99F) to 491—4.31(99D,99F) as 491—4.6(99D,99F) to 491—4.34(99D,99F):

491—4.3(99D,99F) **Gaming officials—duties.** Gaming officials shall have the following powers and duties.

4.3(1) Regulate and control all individuals licensed by the commission.

4.3(2) Have control over and free access to all places and equipment within the boat, racetrack enclosures or support facilities under the control of the licensee, with the exception specified in Iowa Code section 99F.6(8)"b."

4.3(3) Order the exclusion or ejection from the boat, racetrack or support facilities any person who is disqualified for corrupt practices from any boat or racetrack in Iowa or any gaming jurisdiction.

4.3(4) Take notice of any questionable conduct with or without complaint and investigate promptly and render a report to the commission office when there is reasonable cause to believe that the holder of a license has committed an act or engaged in conduct in violation of statue or rules of the commission.

4.3(5) Report all complaints as soon as received by them and make prompt report of their investigation and decision to the commission office.

4.3(6) Conduct an investigation, to include a signature check of all electronic chips, on all slot machines or video games of chance jackpots that are more than $50,000, and have the authority to withhold or require the award of any slot machine jackpot, in writing, when conditions indicate that action is warranted.

4.3(7) Have the authority to sanction for violation of rules persons who are not holders of a license or occupational license and who have allegedly violated commission rules, orders, or final orders, or the Iowa riverboat gambling Act, or whose presence in a casino is allegedly undesirable. These persons are subject to the authority of the board and the commission, to the procedures and rights accorded to a license holder under this chapter, and to the sanctions allowed by law including a fine and expulsion from all casinos in the state.

4.3(8) Suspend a license until the outcome is known of any pending charges if conviction of those charges would disqualify the licensed individual.

4.3(9) Suspend a license pending the outcome of a board hearing when the official has reasonable cause to believe that a violation of a law or rule has been committed and that continued performance of that individual in a licensed capacity would be injurious to the best interests of gaming.

491—4.4(99D,99F) **Duties of the board.** The board shall have the:

4.4(1) Power to interpret the rules and to decide all questions not specifically covered by them.

4.4(2) Power to determine all questions arising with reference to the conduct of gaming.

4.4(3) Authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority.

4.4(4) Suspend the license of any license holder when the official has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

491—4.5(99D,99F) **Disciplinary measures by commission.** Upon the finding of a violation of these rules, or an attempted violation, the commission may:

4.5(1) Deny, suspend, revoke or declare void any license applied for or issued by the commission, or fine a licensee or a holder of an occupational license.

4.5(2) Upon a hearing de novo of the matter determined by the gaming officials, the commission may affirm, reverse, or revise the gaming officials' ruling in all respects.

4.5(3) Cause any person, licensed or unlicensed, whose presence is found by the commission to be inconsistent with maintaining the honesty and integrity of gaming, to be excluded or ejected from any grounds owned or controlled by boat or track operators for any length of time the commission may deem the presence of that individual injurious to the honesty and integrity of racing or gaming. This rule should not be construed to limit in any way the right of the boat or track operator to eject or exclude any person for any reason, other than race, color, creed, sex or national origin.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 2. Amend rule **491—4.1(99D,99F)**, definition of "Gaming official," as follows:

"Gaming official" means any person authorized by the administrator to perform regulatory functions related to *racing, gambling games at pari-mutuel racetracks or* riverboat gambling.

ITEM 3. Amend renumbered rule 491—4.7(99D,99F) as follows:

491—4.7(99D,99F) Penalties. The board may eject the license holder, either from the racetrack or riverboat, under its jurisdiction, suspend the license of the holder for up to 365 days from the date of the original suspension, or impose a fine of up to $1000, or both. In addition, the board may order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. *They may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by the state racing or gaming commission. If the punishment so imposed is not, in the opinion of the board, sufficient, they shall so report to the commission. All fines and suspensions imposed will be promptly reported to the boat or racetrack licensee and commission in writing. When the holder of an occupational license is suspended at one location, the suspension shall immediately become effective at all locations under the jurisdiction of the commission.*

ITEM 4. Amend subrule **20.14(1)**, paragraph **"g,"** as follows:

g. Application after denial or revocation. Any ~~application~~ *applicant* for ~~an~~ *a license to conduct gambling games on an* excursion gambling boat, *a license to operate an excursion gambling boat, or a license to operate gambling games at a pari-mutuel racetrack enclosure* ~~license which~~ *that* has been denied or revoked is not eligible to apply again for licensing until after expiration of one year from the date of such denial or revocation, unless the commission advises that the denial is without prejudice.

ITEM 5. Amend subrule **25.11(2)**, paragraph **"b,"** as follows:

b. Slot machines, progressive slot machines, video poker and all other video games of chance will be allowed as machine games, subject to the approval of individual game prototypes. For racetrack enclosures, video machine as used in Iowa Code section 99F.1(~~10~~ *9*) ~~as amended by 1994 Iowa Acts, chapter 1021, section 8,~~ shall mean any video poker, video blackjack, video keno or similar games requiring a decision on the part of a player after the wager has been made but prior to completing the game. Video machine shall also include a video lottery machine which dispenses payouts in the form of a paper credit slip. A weighted average of the theoretical payout percentage, as defined in 491—subrule 26.15(6), on all machine games shall be posted at the point of ticket sales, main casino entrance, cashier cages, and slot booths.

ITEM 6. Amend 491—Chapter 25 by rescinding and reserving rules **491—25.16(99F)** to **491—25.18(99F)**.

ARC 7445A

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 422.68, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 41, "Determination of Taxable Income," and Chapter 43, "Assessments and Refunds," Iowa Administrative Code.

1997 Iowa Acts, House File 355, House File 388, House File 726, Senate File 129, and Senate File 542, made a number of changes in the Iowa individual income tax law. Most of the changes are retroactively applicable to January 1, 1997, for tax years beginning on or after that date. However, one change is retroactively applicable to November 21, 1995, and some other changes take effect on January 1, 1996, for tax years beginning on or after that date.

The amendments provide a reduction in the tax rates for individual income tax that also reduce the rate for the alternative minimum tax for individual taxpayers.

The amendments provide for an adjustment on the Iowa return for the work opportunity tax credit which replaced the targeted jobs credit on the federal income tax return.

The amendments provide that health insurance premiums for long-term health insurance for nursing home coverage are eligible for the Iowa deduction for health insurance premiums.

The amendments provide that certain national guard personnel and armed forces reserve personnel who served overseas pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area were exempt from Iowa income tax on the active duty pay received for this service.

The amendments describe certain revisions that apply due to enactment of the Internal Revenue Code update bill. The amendments describe a change in administration of the mortgage interest credit so that taxpayers may get a deduction on their Iowa returns for all mortgage interest paid in the tax year.

The revisions provide for a reinstatement of the income tax checkoff for domestic abuse services. Note that the crime victim assistance board reviewed this domestic abuse checkoff rule at its August 1, 1997, meeting.

The amendments describe changes in the livestock production credit refunds so that only taxpayers with cow-calf herds may get the refunds. The amendments provide a change in the qualification for the refunds and that the income qualification amount will be indexed or increased each tax year for inflation. Finally, the amendments specify types of cattle that are included in cow-calf livestock operations. These proposed livestock production credit refund amendments were provided to the Iowa Cattlemen's Association for possible comment.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

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 September 2, 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 September 12, 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 September 5, 1997.

These amendments are intended to implement Iowa Code sections 236.15B, 422.5, 422.7, 422.9, and 422.120 as amended by 1997 Iowa Acts, House File 355, House File 388, House File 726, Senate File 129, and Senate File 542.

The following amendments are proposed.

ITEM 1. Amend subrule 39.6(3), paragraph "a," introductory paragraph, as follows:

a. Method for computation of the minimum tax. For tax years beginning on or after January 1, 1987, the minimum tax is imposed only to the extent that the minimum tax exceeds the taxpayer's regular income tax liability. The minimum tax rate is 75 percent of the maximum regular tax rate *for individual income tax*. For tax years beginning on or after January 1, 1987, *through December 31, 1997,* the tax rate is 7.5 percent of the taxpayer's minimum taxable income. *For tax years beginning on or after January 1, 1998, the tax rate is 6.7 percent of the taxpayer's minimum taxable income.* Minimum taxable income is computed as follows:

ITEM 2. Amend rule 701—39.6(422), implementation clause, as follows:

This rule is intended to implement Iowa Code section 422.5 as amended by ~~1988~~ *1997* Iowa Acts ~~Senate~~ *House* File ~~2074~~ *388*.

ITEM 3. Amend rule 701—40.9(422) and the implementation clause as follows:

701—40.9(422) Targeted jobs tax credit, *work opportunity tax credit,* alcohol fuel credit. Where an individual claims the targeted jobs credit *or the work opportunity tax credit* under Section 51 of the Internal Revenue Code or the alcohol fuel credit under Section 40 of the Internal Revenue Code, the amount of credit allowable must be used to increase federal taxable income. The amount of credit allowable used to increase federal adjusted gross income is deductible in determining Iowa net income. The adjustment for the targeted jobs tax credit is applicable for the tax years beginning on or after January 1, 1977, *and before January 1, 1996. The work opportunity tax credit applies to eligible individuals who begin work after September 30, 1996, and before September 30, 1997.* The adjustment for the alcohol fuel credit is applicable for tax years beginning on or after January 1, 1980.

This rule is intended to implement Iowa Code section 422.7 *as amended by 1997 Iowa Acts, Senate File 129.*

ITEM 4. Amend rule 701—40.48(422) and the implementation clause as follows:

701—40.48(422) Health insurance premiums deduction. For tax years beginning on or after January 1, 1996, the amounts paid by a taxpayer for health insurance for the taxpayer, the taxpayer's spouse, and the taxpayer's dependents are deductible in computing net income on the Iowa return to the extent the amounts paid were not otherwise deductible in computing adjusted gross income. However, amounts paid by a taxpayer for health insurance on a pretax basis whereby the portion of the wages of the taxpayer used to pay health insurance premiums is not included in the taxpayer's gross wages for income tax or social security tax purposes are not deductible on the Iowa return.

In situations where married taxpayers pay health insurance premiums from a joint checking or other joint account and the taxpayers are filing separate state returns or separately on the combined return form, the taxpayers must allocate the deduction between the spouses on the basis of the net income of each spouse to the combined net income unless one spouse can show that only that spouse's income was deposited to the joint account.

In circumstances where a taxpayer is self-employed and takes a deduction on the 1996 federal return for 30 percent of the premiums paid for health insurance on the federal return, the taxpayer would be allowed a deduction on the Iowa return for the portion of the health insurance premiums that was not deducted on the taxpayer's federal return, including any health insurance premiums deducted as an itemized medical deduction under Section 213 of the Internal Revenue Code.

For purposes of the state deduction for health insurance premiums, the same premiums for the same health insurance or medical insurance coverage qualify for this deduction as would qualify for the federal medical expense deduction. Thus, premiums paid for contact lens insurance qualify for the health insurance deduction. Also eligible for the deduction *for tax years beginning in the 1996 calendar year* are premiums paid by a taxpayer before the age of 65 for medical care insurance effective after the age of 65, if the premiums are payable (on a level payment basis) for a period of ten years or more or until the year the taxpayer attains the age of 65 (but in no case for a period of less than five years). *For tax years beginning on or after January 1, 1997, premiums for long-term health insurance for nursing home coverage are eligible for this deduction to the extent the premiums for long-term health care services are eligible for the federal itemized deduction for medical and dental expenses.*

Amounts paid under an insurance contract for other than medical care (such as payment for loss of limb or life or sight) are not deductible, unless the medical charge is stated separately in the contract or provided in a separate statement.

This rule is intended to implement Iowa Code ~~Supplement~~ section 422.7 *as amended by 1997 Iowa Acts, Senate File 129.*

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

ITEM 5. Amend 701—Chapter 40 by adding the following new rule:

701—40.51(422) Exemption of active-duty military pay of national guard personnel and armed forces military reserve personnel for overseas services pursuant to military orders for peacekeeping in the Bosnia-Herzegovina area. For active duty military pay received on or after November 21, 1995, by national guard personnel and by armed forces military reserve personnel, the pay is exempt from state income tax to the extent the military pay was earned overseas for services performed pursuant to military orders related to peacekeeping in the Bosnia-Herzegovina area. In order for the active duty pay to qualify for exemption from tax, the military service had to have been performed outside the United States, but not necessarily in the Bosnia-Herzegovina area.

This rule is intended to implement Iowa Code section 422.7 as amended by 1997 Iowa Acts, House File 355.

ITEM 6. Amend rule 701—41.12(422) and the implementation clause as follows:

701—41.12(422) Reduced state deduction for home mortgage interest for taxpayers with mortgage interest credit. *For tax years beginning before January 1, 1996, taxpayers* ~~Taxpayers~~ who qualified for the mortgage interest credit on their federal return which reduced their deduction for home mortgage interest are subject to the same reduced deduction for mortgage interest for Iowa income tax purposes. The mortgage interest credit is provided in Section 25 of the Internal Revenue Code. For example, a taxpayer paid $6,000 in home mortgage interest in the tax year and qualified for a mortgage interest credit of $900. Thus, the taxpayer had a federal mortgage interest deduction in the tax year of $5,100. The Iowa mortgage interest deduction for the tax year is also $5,100 instead of $6,000. *For tax years beginning on or after January 1, 1996, any taxpayer who had the mortgage interest credit on the federal return can claim a deduction on the Schedule A of the IA 1040 for all the mortgage interest paid in the tax year, including the mortgage interest that was not deducted on the federal return due to the mortgage interest credit.*

This rule is intended to implement Iowa Code sections 422.3 and 422.9*, as amended by 1997 Iowa Acts, Senate File 129*.

ITEM 7. Amend subrule 43.4(4) as follows:

43.4(4) Domestic abuse services checkoff. For tax years beginning on or after January 1, 1991, *but before January 1, 1996, and for tax years beginning on or after January 1, 1997,* a taxpayer filing a state individual income tax return can designate a checkoff of $1 or more to the general fund of the state and to be used for the purposes of providing services to victims of domestic abuse or sexual assault. If the overpayment on the return or the payment made with the filing of the return is not sufficient to cover the amount designated to the domestic abuse services checkoff, the amount credited to the domestic abuse services checkoff will be reduced accordingly. The designation to the domestic abuse services checkoff is irrevocable and cannot be revised on an amended return.

A designation to the domestic abuse services checkoff may be allowed only after obligations of the taxpayer to the department of revenue and finance, the child support recovery unit of the department of human services, the foster care recovery unit of the department of human services, the college student aid commission, the office of investigations of the department of human services, the district courts, other state agencies, the Iowa election campaign checkoff, the Iowa fish and game protection fund checkoff, and the ~~United States Olympic fund~~ *state fair foundation* checkoff are satisfied.

On or before January 31 of the year following the year in which returns with domestic abuse services checkoff are due, the department of revenue and finance is to certify the total amount designated to the domestic abuse services checkoff to the state treasurer.

ITEM 8. Amend rule 701—43.4(422), implementation clause, as follows:

This rule is intended to implement Iowa Code sections 56.18, 236.15A, *236.15B,* 422.12D, 422.12E as amended by ~~1993~~ *1997* Iowa Acts, ~~chapter 144~~ *Senate File 542*, and 456A.16.

ITEM 9. Amend rule 701—43.8(422), introductory paragraph, as follows:

701—43.8(422) Livestock production credit refunds for corporate taxpayers and individual taxpayers. For tax years beginning on or after January 1, 1996, corporate and individual taxpayers who own certain livestock, have livestock production operations in Iowa in the tax year, and who meet certain qualifications are eligible for a livestock production credit refund. The amount of a livestock production credit refund is determined by adding together for each head of livestock in the taxpayer's operation the product of ten cents for each corn equivalent deemed to have been consumed by that animal in the taxpayer's operation in the tax year. However, for tax years beginning in the 1996 calendar year *and for tax years beginning on or after January 1, 1997*, only qualified taxpayers that have cow-calf livestock production operations described in paragraph "i" of subrule 43.8(2) will be eligible for the livestock production credit refunds*, notwithstanding the other types of livestock operations mentioned in this rule*. Note that the livestock production credit refund is also available to taxpayers who meet the qualifications described in subrule 43.8(1) and operate certain types of poultry operations in this state and own the poultry in the operations. The amounts of the livestock production credit refunds for these taxpayers are determined on the basis of ten cents for each corn equivalent deemed to have been consumed by the chickens or the turkeys in the taxpayers' poultry operations in the tax year. However, the amount of livestock production credit refund may not exceed $3,000 per livestock or poultry operation for a tax year. In addition, the amount of livestock production credit refund per taxpayer for a tax year may not exceed $3,000. Therefore, if a particular taxpayer is involved in a cow-calf beef operation, a sheep-ewe flock operation, and a farrow-to-finish hog operation, the maximum livestock production credit refund for this taxpayer may not exceed $3,000.

ITEM 10. Amend subrule 43.8(1), introductory paragraph, as follows:

43.8(1) Qualifications for the livestock production credit refunds. Taxpayers that own livestock located in Iowa in a tax year must meet ~~both of~~ the ~~following~~ qualifications *in paragraphs "a" and "b"* in order to be eligible for the livestock production credit refunds for ~~that~~ tax ~~year~~ *years beginning in the 1996 calendar year. Taxpayers that own livestock located in Iowa in tax years beginning on or after January 1, 1997, must meet the qualification in paragraph "c" for a tax year in order to be eligible for the livestock product refund for that tax year*:

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

ITEM 11. Amend subrule 43.8(1) by adding new paragraph "c" as follows:

c. Individual and corporate taxpayers will be eligible for the livestock production credit refund if the taxpayer's federal taxable income for tax years beginning in the 1997 calendar year is $99,600 or less. In the case of married taxpayers, their combined federal taxable income must be considered to determine if they are eligible for the credit.

For each tax year beginning after 1997, the federal taxable income specified previously in this paragraph is to be multiplied by the "cumulative index factor" for that tax year to calculate the federal taxable income that will be used to determine whether a taxpayer is eligible for the livestock production refund that is authorized for that tax year. "Cumulative index factor" means the product of the annual index factor for the 1997 calendar year and all annual index factors for subsequent calendar years. The annual index factor equals the annual inflation factor for that calendar year as computed in Iowa Code section 422.4 for purposes of indexation of the tax rates for individual income tax.

ITEM 12. Amend subrule 43.8(2), paragraph "i," as follows:

i. For purposes of this rule, "cow-calf beef operations" means those beef cattle production operations whereby the majority of the cattle in the operations were born and raised in the operations and many of the cattle in the operations were sold at a prime market weight of 700 pounds or more.

The livestock production credit refunds for cow-calf operations include the number of cattle raised in the operation, which are sold in the tax year at the stocker weight under the criteria described in paragraph "j" of this subrule and which are sold in the tax year at the feedlot weight under the criteria described in paragraph "k" of this subrule. However, those cattle in the operation that were sold at the feedlot weight in the tax year qualify for a combined stocker and feedlot production credit refund of $11.65 per head of cattle sold, to the extent the cattle sold had been in the operation at least 300 days after the cattle were weaned. Cattle in the operation that were sold at a weight below 700 pounds may not be counted for purposes of computing the livestock production credit refund for the operation. However, *unbred* replacement heifers in inventory on December 31 of the tax year would qualify for a production credit refund of $4.15 per head if these cattle had been born, raised and weaned in the operation and had been in the herd for at least two months after weaning on December 31.

Finally, the livestock production credit refunds for cow-calf operations include refund amounts determined on the number of bred cows, *bred yearling heifers,* and breeding bulls in inventory on December 31 of the tax year times the corn equivalent factor of 111.5 or $11.15. However, any bred cows, *bred yearling heifers,* and breeding bulls in inventory on December 31 which were not in the operation on July 1 of that calendar year may not be considered for purposes of computation of the livestock production credit refund.

ITEM 13. Amend rule 701—43.8(422), implementation clause, as follows:

This rule is intended to implement *Iowa Code section 422.120 as amended by 1997* ~~1996~~ Iowa Acts, *House File 726, Division I* ~~chapter 1197, sections 19 and 21~~.

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REVENUE AND FINANCE DEPARTMENT[701]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 422.17(19) and 422.68, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapters 40, "Determination of Net Income," and 53, "Determination of Net Income," Iowa Administrative Code.

Item 1 amends Chapter 40 by rescinding existing rule 701—40.2(422) and adopting new rule 701—40.2(422) to clarify for taxpayers those dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, on which states are prohibited from imposing an income tax. The new rule also sets forth securities issued under the authority of an Act of Congress on which states may impose an income tax.

Item 2 amends Chapter 40 by rescinding existing rule 701—40.3(422) and adopting new rule 701—40.3(422) to clarify for taxpayers those bonds issued by the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax.

Item 3 amends rule 701—40.32(422) to refer to rule 701—40.52(422) for a discussion of the Iowa tax treatment of interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax if held directly.

Item 4 amends Chapter 40 by adding new rule 701—40.52(422) which sets forth the Department's position in regard to interest and dividends from regulated investment companies (mutual funds) that invest in federal obligations and obligations of Iowa and its political subdivisions.

Item 5 rescinds existing rule 701—53.5(422) and replaces it with new rule 701—53.5(422) which refers to rule 701—40.2(422) for information on the state income tax exemption of various federal obligations.

Item 6 amends rule 701—53.6(422) to make reference to rules 701—40.3(422) which sets forth those obligations of Iowa and its political subdivisions whose interest is exempt from Iowa income tax and 701-40.52(422) which sets forth the Department's position in regard to interest and dividends from regulated investment companies (mutual funds) that invest in federal obligations and obligations of Iowa and its political subdivisions.

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 September 2, 1997, to the Policy Section, Compliance Division, Iowa Department

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

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 September 12, 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 September 5, 1997.

These amendments are intended to implement Iowa Code sections 422.7 and 422.35.

The following amendments are proposed.

ITEM 1. Amend 701—Chapter 40 by rescinding existing rule 40.2(422) and adopting the following new rule in lieu thereof:

701—40.2(422) Interest and dividends from federal securities. For individual income tax purposes, the state is prohibited by federal law from taxing dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities. Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made by deducting the amount of the dividend or interest. If the inclusion of an amount of income or the amount of a deduction is based upon federal adjusted gross income and federal adjusted gross income includes dividends from corporations owned or sponsored by the federal government, or interest derived from obligations of the United States and its possessions, agencies, and instrumentalities, a recomputation of the amount of income or deduction must be made excluding dividends or interest of this type from the calculations.

A federal statute exempts stocks and obligations of the United States Government, as well as the interest on the obligations, from state income taxation (see 31 USCS Section 3124(a)).

"Obligations of the United States" are those obligations issued "to secure credit to carry on the necessary functions of government." Smith v. Davis (1944) 323 U.S. 111, 119, 89 L.Ed. 107, 113, 65 S.Ct. 157, 161. The exemption is aimed at protecting the "borrowing" and "supremacy" clauses of the United States Constitution. Society for Savings v. Bowers (1955) 349 U.S. 143, 144, 99 L.Ed. 2d 950, 955, 75 S.Ct. 607, 608; Hibernia v. City and County of San Francisco (1906) 200 U.S. 310, 313, 50 L.Ed. 495, 496, 26 S.Ct. 265, 266.

Tax-exempt credit instruments possess the following characteristics:

1. They are written documents,
2. They bear interest,
3. They are binding promises by the United States to pay specified sums at specified dates, and
4. They have Congressional authorization which also pledges the faith and credit of the United States in support of the promise to pay. Smith v. Davis, supra.

A governmental obligation that is secondary, indirect, or contingent, such as a guaranty of a nongovernmental obligor's primary obligation to pay the principal amount of and interest on a note, is not an obligation of the type exempted under 31 USCS Section 3124(1). Rockford Life Ins. Co. v. Department of Revenue, 107 S.Ct. 2312 (1987).

The following list contains widely held United States government obligations, but is not intended to be all-inclusive.

This noninclusive listing indicates the position of the department with respect to the income tax status of the listed securities. It is based on current federal law and the interpretation thereof by the department. Federal law or the department's interpretation is subject to change. Federal law precludes all states from imposing an income tax on the interest income from direct obligations of the United States government. Also, preemptive federal law may preclude state taxation of interest income from the securities of federal government sponsored enterprises and agencies and from the obligations of U.S. territories. Any profit or gain on the sale or exchange of these securities is taxable.

40.2(1) Federal obligations and obligations of federal instrumentalities the interest on which is exempt from Iowa income tax.

a. United States Government obligations: United States Treasury—Principal and interest from bills, bonds, and notes issued by the United States Treasury exempt under 31 USCS Section 3124[a].

1. Series E, F, G, and H bonds
2. United States Treasury bills
3. U.S. Government certificates
4. U.S. Government bonds
5. U.S. Government notes

b. Territorial obligations:

1. Guam—Principal and interest from bonds issued by the Government of Guam (48 USCS Section 1423[a]).
2. Puerto Rico—Principal and interest from bonds issued by the Government of Puerto Rico (48 USCS Section 745).
3. Virgin Islands—Principal and interest from bonds issued by the Government of the Virgin Islands (48 USCS Section 1403).
4. Northern Mariana Islands—Principal and interest from bonds issued by the Government of the Northern Mariana Islands (48 USCS Section 1681(c)).

c. Federal agency obligations:

1. Commodity Credit Corporation—Principal and interest from bonds, notes, debentures, and other similar obligations issued by the Commodity Credit Corporation (15 USCS Section 713a-5).
2. Banks for Cooperatives—Principal and interest from notes, debentures, and other obligations issued by Banks for Cooperatives (12 USCS Section 2134).
3. Farm Credit Banks—Principal and interest from system-wide bonds, notes, debentures, and other obligations issued jointly and severally by Banks of the Federal Farm Credit System (12 USCS Section 2023).
4. Federal Intermediate Credit Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Intermediate Credit Banks (12 USCS Section 2079).
5. Federal Land Banks—Principal and interest from bonds, notes, debentures, and other obligations issued by Federal Land Banks (12 USCS Section 2055).

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

6. Federal Land Bank Association—Principal and interest from bonds, notes, debentures, and other obligations issued by the Federal Land Bank Association (12 USCS Section 2098).

7. Financial Assistance Corporation—Principal and interest from notes, bonds, debentures, and other obligations issued by the Financial Assistance Corporation (12 USCS Section 2278b-10[b]).

8. Production Credit Association—Principal and interest from notes, debentures, and other obligations issued by the Production Credit Association (12 USCS Section 2077).

9. Federal Deposit Insurance Corporation (FDIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Deposit Insurance Corporation (12 USCS Section 1825).

10. Federal Financing Bank—Interest from obligations issued by the Federal Financing Bank. Considered to be United States Government obligations (12 USCS Section 2288, 31 USCS Section 3124[a]).

11. Federal Home Loan Bank—Principal and interest from notes, bonds, debentures, and other such obligations issued by any Federal Home Loan Bank and consolidated Federal Home Loan Bank bonds and debentures (12 USCS Section 1433).

12. Federal Savings and Loan Insurance Corporation (FSLIC)—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Savings and Loan Insurance Corporation (12 USCS Section 1725[e]).

13. Federal Financing Corporation—Principal and interest from notes, bonds, debentures, and other such obligations issued by the Federal Financing Corporation (12 USCS Section 2288(b)).

14. Financing Corporation (FICO)—Principal and interest from any obligation of the Financing Corporation (12 USCS Sections 1441[e][7] and 1433).

15. General Services Administration (GSA)—Principal and interest from General Services Administration participation certificates. Considered to be United States Government obligations (31 USCS Section 3124[a]).

16. Housing and Urban Development (HUD).

- Principal and interest from War Housing Insurance debentures (12 USCS Section 1739[d]).
- Principal and interest from Rental Housing Insurance debentures (12 USCS Section 1747g[g]).
- Principal and interest from Armed Services Mortgage Insurance debentures (12 USCS Section 1748b[f]).
- Principal and interest from National Defense Housing Insurance debentures (12 USCS Section 1750c[d]).
- Principal and interest from Mutual Mortgage Insurance Fund debentures (12 USCS Section 1710[d]).

17. National Credit Union Administration Central Liquidity Facility—Income from notes, bonds, debentures, and other obligations issued on behalf of the National Credit Union Administration Central Liquidity Facility (12 USCS Section 1795k[b]).

18. Resolution Funding Corporation—Principal and interest from obligations issued by the Resolution Funding Corporation (12 USCS Sections 1441[f][7] and 1433).

19. Student Loan Marketing Association (Sallie Mae)—Principal and interest from obligations issued by the Student Loan Marketing Association. Considered to be United States Government obligations (20 USCS Section 1087-2[1], 31 USCS Section 3124[a]).

20. Tennessee Valley Authority—Principal and interest from bonds issued by the Tennessee Valley Authority (16 USCS Section 831n-4[d]).

21. United States Postal Service—Principal and interest from obligations issued by the United States Postal Service (39 USCS Section 2005[d][4]).

22. Treasury Investment Growth Receipts.

23. Certificates on Government Receipts.

40.2(2) Taxable securities. There are a number of securities issued under the authority of an Act of Congress which are subject to the Iowa income tax. These securities may be guaranteed by the United States Treasury or supported by the issuing agency's right to borrow from the Treasury. Some may be backed by the pledge of full faith and credit of the United States Government. However, it has been determined that these securities are not direct obligations of the United States Government to pay a specified sum at a specified date, nor is the principal and interest from these securities specifically exempted from taxation by the respective authorizing acts. Therefore, income from such securities is subject to the Iowa income tax. Examples of securities which fall into this category are those issued by the following agencies and institutions:

a. Federal agency obligations:

1. Federal or State Savings and Loan Associations
2. Export-Import Bank of the United States
3. Building and Loan Associations
4. Interest on federal income tax refunds
5. Postal Savings Account
6. Farmers Home Administration
7. Small Business Administration
8. Federal or State Credit Unions
9. Mortgage Participation Certificates
10. Federal National Mortgage Association
11. Federal Home Loan Mortgage Corporation (Freddie Mac)
12. Federal Housing Administration
13. Federal National Mortgage Association (Fannie Mae)
14. Government National Mortgage Association (Ginnie Mae)
15. Merchant Marine (Maritime Administration)

b. Obligations of international institutions:

1. Asian Development Bank
2. Inter-American Development Bank
3. International Bank for Reconstruction and Development (World Bank)

c. Other obligations:

Washington D.C. Metro Area Transit Authority

Interest from repurchase agreements involving federal securities is subject to Iowa income tax. Nebraska Department of Revenue v. John Loewenstein, 514 US —, 130 L. Ed. 2d 470, 115 S. Ct. — (1994). Everett v. State Dept. of Revenue and Finance, 470 N.W.2d 13 (Iowa 1991).

For tax years beginning on or after January 1, 1987, interest from Mortgage Backed Certificate Guaranteed by Government National Mortgage Association ("Ginnie Maes") is subject to Iowa income tax. See Rockford Life Insurance Company v. Illinois Department of Revenue, 96 L.Ed.2d 152.

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

This rule is intended to implement Iowa Code section 422.7.

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

ITEM 2. Amend 701—Chapter 40 by rescinding rule 701—40.3(422) and adopting the following new rule in lieu thereof:

701—40.3(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa net income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income.

The following is a noninclusive listing of bonds issued by the state of Iowa and its political subdivisions, interest on which is exempt from both federal and state income taxes.

1. Board of Regents: Bonds issued under Iowa Code sections 262.41, 262.51, 262.60, and 262A.8.
2. Urban Renewal: Bonds issued under Iowa Code section 403.9(2).
3. Municipal Housing Law — Low income housing: Bonds issued under Iowa Code section 403A.12.
4. Subdistricts of soil conservation districts, revenue bonds: Bonds issued under Iowa Code section 467A.22.
5. Aviation authorities, revenue bonds: Bonds issued under Iowa Code section 330A.16.
6. Rural water districts: Bonds issued under Iowa Code section 357A.15.
7. Iowa Alcoholic Beverage Control Act — Warehouse project: Bonds issued under Iowa Code section 123.159.
8. County Health Center: Bonds issued under Iowa Code section 331.441(2)"c"(7).
9. Iowa Finance Authority, Sewage treatment works financing: Bonds issued under Iowa Code section 220.131(6).
10. Agricultural Development Authority, Beginning farmer loan program: Bonds issued under Iowa Code section 175.17.
11. Iowa Finance Authority, Iowa comprehensive petroleum underground storage tank fund: Bonds issued under Iowa Code section 455G.6(14).
12. Iowa Finance Authority, E911 Program notes and bonds: Bonds issued under Iowa Code section 477B.20(6). (Transferred to Iowa Code section 34A.20(6) in 1993 Iowa Code).
13. Quad Cities Interstate Metropolitan Authority Bonds: Bonds issued under Iowa Code section 330B.24. (Transferred to Iowa Code section 28.24 in 1993 Iowa Code.)
14. Iowa Finance Authority, Municipal Investment Recovery Program: Bonds issued under Iowa Code section 220.173(4). (Transferred to Iowa Code section 16.173(4) in 1993 Iowa Code.)
15. Prison Infrastructure Revenue Bonds: Bonds issued under Iowa Code section 16.177(8).
16. Government Flood Damage Program Bonds: Bonds issued under Iowa Code section 16.183(4).

Interest from repurchase agreements involving obligations of the type discussed in this rule is subject to Iowa income tax. Nebraska Department of Revenue v. John Loewenstein, 514 US —, 130 L. Ed. 2d 470, 115 S. Ct. — (1994). Everett v. State Dept. of Revenue and Finance, 470 N.W.2d 13 (Iowa 1991).

For the treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in this rule, see rule 701—40.52(422).

Gains and losses from the sale or other disposition of bonds issued by the state of Iowa or its political subdivisions, as distinguished from interest income, shall be taxable for state income tax purposes.

This rule is intended to implement Iowa Code section 422.7.

ITEM 3. Amend rule 701—40.32(422) to read as follows:

701—40.32(422) Interest and dividends from regulated investment companies which are exempt from federal income tax. For tax years beginning on or after January 1, 1987, interest and dividends from regulated investment companies which are exempt from federal income tax under the Internal Revenue Code are subject to Iowa income tax. *See rule 701—40.52(422) for a discussion of the Iowa income tax exemption of some interest and dividends from regulated investment companies that invest in certain obligations of the state of Iowa and its political subdivisions the interest from which is exempt from Iowa income tax.* To the extent that a loss on the sale or exchange of stock in a regulated investment company was disallowed on an individual's federal income tax return pursuant to Section 852(b)(4)(B) of the Internal Revenue Code because the taxpayer held the stock six months or less and because the regulated investment company had invested in federal tax-exempt securities, the loss is allowed for purposes of computation of net income.

This rule is intended to implement Iowa Code section 422.7.

ITEM 4. Amend 701—Chapter 40 by adopting the following new rule 701—40.52(422):

701—40.52(422) Mutual funds. Iowa does not tax dividend or interest income from regulated investment companies to the extent that such income is derived from interest on United States Government obligations or obligations of this state and its political subdivisions. The exemption is also applicable to income from regulated investment companies which is derived from interest on government-sponsored enterprises and agencies where federal law specifically precludes state taxation of such interest. Income derived from interest on securities which are merely guaranteed by the federal government or from repurchase agreements collateralized by the United States Government obligations is not excluded and is subject to Iowa income tax. There is no distinction between Iowa's tax treatment of interest received by a direct investor as compared with a mutual fund shareholder. The interest retains its same character when it "flows-through" the mutual fund and is subject to taxation accordingly.

Taxpayers may subtract from federal adjusted gross income, income received from any of the obligations listed in 701—subrule 40.2(1) and rule 701—40.3(422) above, even if the obligations are owned indirectly through owning shares in a mutual fund:

1. If the fund invests exclusively in these state tax-exempt obligations, the entire amount of the distribution (income) from the fund may be subtracted.
2. If the fund invests in both exempt and nonexempt obligations, the amount represented by the percentage of the distribution that the mutual fund identifies as exempt may be subtracted.
3. If the mutual fund does not identify an exempt amount or percentage, taxpayers may figure the amount to be subtracted by multiplying the distribution by the following fraction: as the numerator, the amount invested by the fund

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

in state-exempt United States obligations; as the denominator, the fund's total investment. Use the year-end amounts to figure the fraction if the percentage ratio has remained constant throughout the year. If the percentage ratio has not remained constant, take the average of the ratios from the fund's quarterly financial reports.

Therefore, if the federal adjusted gross income of an individual, taxable by Iowa, includes dividends or interest of this type, an adjustment must be made deducting the amount of the dividend or interest.

This rule is intended to implement Iowa Code section 422.7.

ITEM 5. Amend 701—Chapter 53 by rescinding 701—53.5(422) and adopting the following new rule in lieu thereof:

701—53.5(422) Interest and dividends from federal securities. See rule 701—40.2(422) for a discussion of the exempt status of interest and dividends from federal securities.

This rule is intended to implement Iowa Code section 422.35.

ITEM 6. Amend rule 701—53.6(422), introductory paragraph, to read as follows:

701—53.6(422) Interest and dividends from foreign securities, and securities of state and their political subdivisions. Interest and dividends from foreign securities and from securities of state and their political subdivisions are to be included in Iowa taxable income. Certain types of interest and dividends, because of specific exemption, are not includable in income for federal tax purposes. To the extent such income has been excluded for federal income tax purposes, unless the item of income is specifically exempted from state taxation by the laws or constitution of Iowa or of the United States, it must be added to Iowa taxable income. *See rule 701—40.3(422) for a listing of obligations of the state of Iowa and its political subdivisions, the interest from which is exempt from Iowa corporation income tax. For the tax treatment of interest or dividends from regulated investment companies (mutual funds) that invest in obligations of the type discussed in rule 701—40.3(422), see rule 701—40.52(422).*

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TRANSPORTATION DEPARTMENT[761]

Notice of Termination and 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 terminates the rule making initiated by its Notice of Intended Action published in the January 15, 1997, Iowa Administrative Bulletin as ARC 6993A, which proposed to rescind Chapter 411, "Handicapped Identification Devices," and to adopt in lieu thereof Chapter 411, "Handicapped Parking Permits," Iowa Administrative Code.

Because of legislation that was enacted in 1997, the Department made several changes to the proposed rules and is renoticing the rules.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 411, "Handicapped Identification Devices," and to adopt in lieu thereof Chapter 411, "Persons with Disabilities Parking Permits," Iowa Administrative Code.

1997 Iowa Acts, House File 688, made several changes to the handicapped parking law:

1. "Handicapped" parking permits are now termed "persons with disabilities" parking permits.
2. Persons with permanent disabilities will not be required to renew their permits every four years; they will be issued nonexpiring permits.
3. A "handicapped" designation on a driver's license or nonoperator's identification card is no longer required.
4. A physician's or chiropractor's signature on the face of a windshield placard is no longer required.

1997 Iowa Acts, House File 692, provides that a physician assistant or an advanced registered nurse practitioner may furnish the statement needed to obtain a persons with disabilities parking permit.

1997 Iowa Acts, Senate File 177, section 5, provides for issuance of wheelchair lift warning cones.

Any person or agency may submit written comments concerning these proposed rules 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 September 2, 1997.

A meeting to hear requested oral presentations is scheduled for Thursday, September 4, 1997, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the lower level of Park Fair Mall, 100 Euclid Avenue, Des Moines.

The meeting will be canceled without further notice if no oral presentation is requested.

These rules are intended to implement Iowa Code chapter 321L.

Proposed rule-making action:

Rescind Chapter 411, "Handicapped Identification Devices," and insert in lieu thereof the following new chapter:

CHAPTER 411
PERSONS WITH DISABILITIES PARKING PERMITS

761—411.1(321L) Administration. The office of vehicle services administers this chapter. Its mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. It is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

761—411.2(321L) Application for persons with disabilities parking permit.

411.2(1) Application for a persons with disabilities parking permit shall be made on Form 411055, which may be obtained from the department, a county treasurer's office, or the Persons with Disabilities Division, Department of Hu-

TRANSPORTATION DEPARTMENT[761](cont'd)

man Rights, Lucas State Office Building, Des Moines, Iowa 50319. The completed form shall be submitted to the office of vehicle services. The form may also be taken to a driver's license examination station.

411.2(2) The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall indicate that the person is a person with a disability and whether the disability is permanent or temporary.

411.2(3) If an agency or organization is providing transportation for persons with disabilities or elderly persons, the application shall include the name, mailing address, telephone number and federal employer's identification number of the agency or organization and the signature of its authorized representative.

761—411.3(321L) Removable windshield placards.

411.3(1) Eligibility.

a. A person who has a permanent disability is eligible for a nonexpiring removable windshield placard.

b. An agency or organization providing transportation for persons with disabilities or elderly persons is eligible for a removable windshield placard valid for four years from the date of issuance. However, the first reissuance will occur in the year 2001. The placard shall bear the name of the agency or organization and the signature of its authorized representative.

c. A person who has a temporary disability is eligible for a temporary removable windshield placard valid for no less than one week nor more than six months.

411.3(2) Display. A removable windshield placard shall be displayed by hanging it from the rearview mirror in the driver's compartment of the motor vehicle so that it can be read through the windshield from outside the vehicle. If there is no rearview mirror in the vehicle, the placard shall be displayed on the dashboard. If the vehicle has no rearview mirror and no dashboard, the person with a disability may obtain a persons with disabilities special registration plate parking sticker to be affixed to the vehicle's registration plate.

761—411.4(321L) Persons with disabilities special registration plate parking stickers.

411.4(1) Eligibility.

a. A person who has a permanent disability and who owns a motor vehicle for which the person has been issued disabled veterans plates under Iowa Code section 321.105 or registration plates under Iowa Code section 321.34 may obtain a persons with disabilities special registration plate parking sticker to be affixed to the rear plate.

b. A person who has a temporary disability is not eligible for the sticker.

c. An agency or organization providing transportation for persons with disabilities or elderly persons is not eligible for the sticker.

411.4(2) Display. The sticker shall be affixed to the lower right corner of the rear registration plate, as required in rule 761—400.53(321).

411.4(3) Validity. The sticker is valid as long as the registration for the vehicle is current.

761—411.5(321L) Persons with disabilities special registration plates. See 761—Chapter 401.

761—411.6(321L) Wheelchair lift warning cone.

411.6(1) Eligibility. A person who has been issued a persons with disabilities parking permit other than a temporary removable windshield placard and who operates a motor vehicle with a wheelchair lift is eligible for a wheelchair lift warning cone.

411.6(2) Application. Application for a warning cone shall be made to the office of vehicle services. The application shall include the applicant's name and mailing address, the plate number of the vehicle operated by the applicant that is equipped with a wheelchair lift, and a self-certification stating that the vehicle is so equipped.

411.6(3) Display. A wheelchair lift warning cone may be displayed only in conjunction with a persons with disabilities parking permit when the vehicle equipped with the lift is parked in a persons with disabilities parking space.

761—411.7(321L) Revocation. Proof of conviction of two or more violations involving improper use of a persons with disabilities parking permit is grounds for revocation of the holder's privilege to possess or use the permit.

411.7(1) If the permit is revoked, the holder shall return it to the department within ten days after receipt of notice of revocation unless the holder requests a hearing within the ten-day period.

411.7(2) A request for a hearing shall be made in writing to the director of the office of vehicle services. The hearing shall be held in accordance with 761—Chapter 13.

761—411.8(321L) Return of parking permit. A persons with disabilities parking permit to be returned to the department in accordance with Iowa Code section 321L.3 shall be returned within ten days of the occurrence.

These rules are intended to implement Iowa Code chapter 321L and 1997 Iowa Acts, Senate File 177, section 5, House File 688, and House File 692.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 1996 — July 31, 1996	8.75%
August 1, 1996 — August 31, 1996	9.00%
September 1, 1996 — September 30, 1996	8.75%
October 1, 1996 — October 31, 1996	8.75%
November 1, 1996 — November 30, 1996	8.75%
December 1, 1996 — December 31, 1996	8.50%
January 1, 1997 — January 31, 1997	8.25%
February 1, 1997 — February 28, 1997	8.25%
March 1, 1997 — March 31, 1997	8.50%
April 1, 1997 — April 30, 1997	8.50%
May 1, 1997 — May 31, 1997	8.75%
June 1, 1997 — June 30, 1997	9.00%
July 1, 1997 — July 31, 1997	8.75%
August 1, 1997 — August 31, 1997	8.50%

ARC 7455A

CORRECTIONS DEPARTMENT[201]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby amends Chapter 20, "Institutions Administration," Iowa Administrative Code.

This rule requires inmates to pay an incarceration fee of up to $5 per month for custodial expenses as a result of the inmate's incarceration. Expenses may include but not be limited to education, room and board, and treatment programming. Institutions' budgets have been reduced by a total of $302,500 with the expectation that the institutions attempt to recover the difference by the collection of this fee.

This rule was previously Adopted and Filed Emergency and became effective on June 30, 1997; however, it was later determined that the collection of this fee from all inmates might be impractical based on the determination of each inmate's "ability to pay." Therefore, the Department finds it necessary to rescind the current rule and adopt a new rule in lieu thereof.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical because of the immediate need for the rule change to implement the intent of the law.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on July 25, 1997, in order to comply with legislative intent.

This amendment was adopted by the Department of Corrections on July 25, 1997.

This amendment is also published herein under Notice of Intended Action as **ARC 7452A** to allow for public comment.

This rule is intended to implement Iowa Code section 904.108 as amended by 1997 Iowa Acts, House File 734.

This rule became effective July 25, 1997.

The following rule is adopted.

Rescind rule 201—20.10(904) and adopt in lieu thereof the following new rule:

201—20.10(904) Incarceration fees. Effective July 1, 1997, an incarceration fee of up to $5 per month will be assessed to all inmates who are financially able to pay. The ability to pay will be determined by an inmate's medical, physical, and mental status as well as security and program levels.

20.10(1) Deductions will occur on the first workday of each month provided all other legal and department financial obligations have been met including personal hygiene items and postage. Legal obligations include, but may not be limited to, Iowa Code section 904.108 as amended by 1997 Iowa Acts, House File 734; Iowa Code sections 904.508, 904.702, 904.809 and 904.909; Iowa Code chapters 610 and 610A; and Iowa Rules of Civil Procedure section 80(b). Federal obligations include but are not limited to United States Code Title 28, Section 1915(b), and Federal Rules of Civil Procedure, page 54, and United States Code Title 31, Section 3713.

20.10(2) For those inmates determined to be able to pay, the first deduction will occur on the first workday in August and on the first workday of each subsequent month thereafter until the release of the inmate.

20.10(3) If an inmate is determined to be able to pay but there are insufficient funds in the inmate's account at the time of the deduction, the amount will be deducted from subsequent credits to the account.

20.10(4) Inmates assigned to a violator program at ICIW or NCF, in accordance with Iowa Code section 904.207, or inmates employed in private sector jobs, in which case federal regulations apply in accordance with Iowa Code section 904.108 as amended by 1997 Iowa Acts, House File 734, are excluded from deductions as required by rule.

20.10(5) The director may temporarily delay or suspend the collection of these fees or may modify the method or source of collections to minimize related administrative burdens.

This rule is intended to implement Iowa Code section 904.108.

[Filed Emergency 7/25/97, effective 7/25/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7449A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 135C.14, the Department of Inspections and Appeals hereby amends Chapter 57, "Residential Care Facilities"; Chapter 58, "Intermediate Care Facilities"; Chapter 59, "Skilled Nursing Facilities"; Chapter 62, "Residential Care Facilities for Persons with Mental Illness (RCF/PMI)"; Chapter 63, "Residential Care Facilities for the Mentally Retarded"; Chapter 64, "Intermediate Care Facilities for the Mentally Retarded"; and Chapter 65, "Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI)," Iowa Administrative Code.

These amendments implement 1997 Iowa Acts, Senate File 523, which requires dependent adult abuse and criminal history record checks for anyone employed in a health care facility after July 1, 1997.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the amendments are required to comply with statutory changes.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived since 1997 Iowa Acts, Senate File 523, allows these amendments to be effective upon filing with the Administrative Rules Coordinator on July 25, 1997.

These amendments are also published herein under Notice of Intended Action as **ARC 7448A** to solicit public comments.

The Board of Health approved the adoption of these amendments on July 23, 1997.

These amendments became effective July 25, 1997.

These amendments are intended to implement Iowa Code section 135C.33 as amended by 1997 Iowa Acts, Senate File 523.

The following amendments are adopted.

ITEM 1. Rescind subrules **57.12(3)**, **58.11(3)**, **59.13(3)**, **62.9(5)**, **63.11(3)**, and **65.9(5)** and insert in lieu thereof the following new subrules:

[Insert subrule no.] Personnel histories.

a. Each health care facility shall submit a form specified by the department of public safety to the department of public safety, and receive the results of a criminal history check and dependent adult abuse record check before any person is employed in a health care facility. The health care facility may submit a form specified by the department of human services to the department of human services to request a child abuse history check. For the purposes of this subrule, "employed in a facility" shall be defined as any individual who is paid, either by the health care facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors), to provide direct or indirect treatment or services to residents in a health care facility. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the requirements of this subrule are individuals such as building contractors, repair workers or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services to the residents of the health care facility.

b. A person who has a criminal record or founded dependent adult abuse report cannot be employed in a health care facility unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment.

c. Each health care facility shall ask each person seeking employment in a facility "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted.

d. If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed in a health care facility unless the department of human services has evaluated the crime or founded report and concluded that the report does not merit prohibition of employment.

e. The facility shall keep the copies of all record checks and evaluations.

ITEM 2. Rescind rule 481—64.34(135C) and insert in lieu thereof the following new rule:

481—64.34(135C) Personnel histories.

64.34(1) Each health care facility shall submit a form specified by the department of public safety to the department of public safety, and receive the results of a criminal history check and dependent adult abuse record check before any person is employed in a health care facility. The health care facility may submit a form specified by the department of human services to the department of human services to request a child abuse history check. For the purposes of this rule, "employed in a facility" shall be defined as any individual who is paid, either by the health care facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors), to provide direct or indirect treatment or services to residents in a health care facility. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the requirements of this rule are individuals such as building contractors, repair workers or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services to the residents of the health care facility.

64.34(2) A person who has a criminal record or founded dependent adult abuse report cannot be employed in a health care facility unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment.

64.34(3) Each health care facility shall ask each person seeking employment in a facility "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted.

64.34(4) If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed in a health care facility unless the department of human services has evaluated the crime or founded report and concluded that the report does not merit prohibition of employment.

64.34(5) The facility shall keep the copies of all record checks and evaluations.

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ARC 7432A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals hereby amends Chapter 71, "Overpayment Recovery Unit," Iowa Administrative Code.

The Department of Human Services (DHS) recently adopted rules to implement changes in the Food Stamp Program mandated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

The amendments bring rules into conformity with the DHS rules and federal mandates in the Food Stamp Program by adding three additional methods of collection for food stamp overpayment debts owed to the Department of Human Services.

Additionally, the amendments implement a provision in the law that revised the amounts considered for further collection action in small claims court or referral to the Attorney General for district court action.

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

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the amendments are required to comply with state and federal mandates.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and the amendments be made effective upon filing on July 24, 1997, as the changes to the Food Stamp Program and revised amounts for collection action in small claims or district court were effective immediately upon enactment.

These amendments are intended to implement Iowa Code sections 10A.104(6) and 10A.402(5).

These amendments became effective on July 24, 1997.

The following amendments are adopted.

ITEM 1. Amend rule 481—71.5(10A), introductory paragraph, as follows:

481—71.5(10A) Repayment process. Payments are made in cash or by allotment reduction. The amount of allotment reduction is different for agency and client error. *Title 7, Code of Federal Regulations, Section 273.18(g), and* Iowa Administrative Code 441—46.5(239), "Source of recoupment," ~~explains~~ *explain* the amounts. Methods of collection may include but are not limited to the following:

ITEM 2. Amend subrule **71.5(1)**, paragraph **"b,"** as follows:

b. A food stamp overpayment is collected by ~~the following methods:~~

~~(1) Agency error. A reasonable amount and rate of payment are determined by the debtor and are reviewed by the recovery unit. Payment is made in cash, food stamps, or benefit reduction.~~

~~(2) Client error. Payment is made in~~ cash *payment, returned* food stamps, or benefit reduction. If the debtor chooses not to make payment in cash or food stamps, the benefit reduction amount is determined by DHS. If a debtor chooses cash payment, the amount cannot be less than the benefit reduction amount. The debtor may choose to repay more than the minimum required for benefit reduction.

ITEM 3. Amend rule 481—71.6(10A) to read as follows:

481—71.6(10A) Further collection action. If complete repayment has not been received by the above methods, further collection action may be taken. This action includes, but is not limited to, the following:

71.6(1) For all overpayments.

~~1~~ *a.* Claims ~~below $2000,~~ *of $4,000 or less,* small claims court action.

~~2~~ *b.* Claims of ~~$2000 or above,~~ *more than $4,000,* referral to the attorney general for district court action.

~~3~~ *c.* State income tax refund in accordance with Iowa Administrative Code 441—Chapter 11.

~~4~~ *d.* Debtor's estate or bankruptcy proceedings.

~~5~~ *e.* From sponsors in special alien cases under Iowa Administrative Code 441—subrule 46.5(4).

~~6~~ *f.* Income setoff of debts in accordance with Iowa Code section 421.17(29) and 701—Chapter 150.

~~7~~ *g.* Distress ~~warrant~~ *warrants.*

~~8~~ *h.* Liens.

71.6(2) For food stamp overpayments. In addition to the actions in subrule 71.6(1), the following may be used for the collection of food stamp overpayments.

a. Federal income tax refund offset in accordance with Iowa Administrative Code rule 441—11.5(234).

b. Federal payments (i.e., wages) withholding in accordance with Iowa Administrative Code rule 441—11.5(234).

c. Unemployment compensation withholding in accordance with Iowa Administrative Code rule 441—11.5(234).

The recovery unit may use one or more of the above actions listed for any overpayment that has occurred.

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[Published 8/13/97]

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ARC 7426A

SOIL CONSERVATION DIVISION[27]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby amends Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

Amendments in this action apply new appropriations for the 1997-98 fiscal year to the Iowa Financial Incentive Program for Soil Erosion Control. Existing Chapter 10 program rules are applied to funds provided in 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 1997, as **ARC 7308A.**

The Division adopted these amendments on July 23, 1997, and is requesting emergency implementation pursuant to Iowa Code section 17A.5(2)"b"(2). Emergency implementation is beneficial to the public because funds may be utilized this summer and fall for the installation of needed soil and water conservation practices.

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

These amendments are intended to implement Iowa Code chapter 161A and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."

These amendments became effective July 23, 1997, upon filing with the Administrative Rules Coordinator.

The following amendments are adopted.

ITEM 1. Amend rule 27—10.41(161A), introductory paragraph, as follows:

27—10.41(161A) Appropriations. The department of agriculture and land stewardship, division of soil conservation, has received appropriations for conservation cost-sharing since 1973 and appropriations to fund certain incentive programs for soil erosion control since 1979. The Seventy-fifth General Assembly provided ~~$5,918,606 for fiscal 1994 and~~ $5,918,606 for fiscal 1995. The Seventy-sixth General Assembly provided $5,918,606 for fiscal 1996 and $6,461,850 for fiscal 1997. *The Seventy-seventh General Assembly provided $6,461,850 for fiscal 1998.*

ITEM 2. Amend rule **27—10.41(161A)**, implementation clause, as follows:

This rule is intended to implement Iowa Code chapter 161A; ~~1993 Iowa Acts, chapter 176, section 1, subsection 4, paragraphs "b," "c," and "d";~~ 1994 Iowa Acts, chapter 1198, SOIL CONSERVATION DIVISION[27](cont'd)

section 1, subsection 4, paragraphs "b," "c," and "d"; ~~and~~ 1995 Iowa Acts, chapter 216, section 1, subsection 4, paragraphs "b," "c," and "d"; ~~and~~ 1996 Iowa Acts, ~~Senate File 2446~~ *chapter 1214*, section 1, subsection 4, paragraphs "b," "c," and "d~~.~~"*; and 1997 Iowa Acts, House File 708, section 1, subsection 4, paragraphs "b," "c," and "d."*

[Filed Emergency After Notice 7/23/97, effective 7/23/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7421A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 15, 1997, emergency adopted amendments to Chapter 125, "General Requirements and Covenants for Highway and Bridge Construction," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 21, 1997, Iowa Administrative Bulletin as **ARC 7227A**.

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

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

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

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

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

This rule-making action also adopts by reference one amendment to both the Series of 1995 and the Series of 1997. The amendment is the same for both books. The amendment modifies Article 1102.01.

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

These amendments are identical to the ones published under Notice except for the following:

1. In the Notice, the amendment to Article 1102.01 erroneously stated that under the CPA-reviewed statement, the contractor was limited to $600,000 of uncompleted work under contract. This was corrected to allow the contractor to have uncompleted work under contract up to the contractor's maximum prequalification amount, but to limit an individual award to $600,000.

2. In subrules 125.1(2) and 125.2(2), dates certain have been substituted for the phrase "effective date of rule."

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

Under Iowa Code paragraph 17A.5(2)"b"(2), the Department of Transportation finds that the addition of a third type of contractor prequalification will confer a benefit on smaller contractors who wish to be prequalified for more than $100,000 of uncompleted work under contract. It will mostly benefit contractors performing the following types of work: bridges, culverts, lighting, patching and joint and crack sealing.

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

The supplemental specifications for on-the-job training will confer a benefit on minorities, women, and others who are seeking on-the-job training in construction trades.

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

These amendments became effective July 17, 1997.

Rule-making actions:

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

CHAPTER 125
GENERAL REQUIREMENTS AND COVENANTS FOR HIGHWAY AND BRIDGE CONSTRUCTION

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

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

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

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

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

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

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

Article No.	Title	Effective Date of Amendment
1101.03	Definition of Terms	1/22/97
1102.01	Competency and Qualification of Bidders	1/22/97, *7/17/97*
1103.01	Consideration of Bids	1/22/97
1104.08	Final Cleaning Up	1/22/97
1105.12	Restrictions on Moving and Use of Heavy Equipment	1/22/97

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

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

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

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

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

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

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

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

Article No.	Title	Effective Date of Amendment
1101.03	Definition of Terms	1/22/97
1102.01	Competency and Qualification of Bidders	1/22/97, *7/17/97*
1103.01	Consideration of Bids	1/22/97
1104.08	Final Cleaning Up	1/22/97
1105.12	Restrictions ~~of~~ *on* Moving and Use of Heavy Equipment	1/22/97

761—125.3(307A) Availability of specifications.

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

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

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

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

[Filed Emergency After Notice 7/15/97, effective 7/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

EDITOR'S NOTE: The amendment to Article 1102.01 and the two supplemental specifications submitted by the Department of Transportation with this rule making have been reproduced on pages 370 to 376.

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

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

MAXPREQ=[CURRENT+NONCURRENT+LL]*F

Where:

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

The Contracting Authority will qualify Contractors into three categories:

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

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

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

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

SUPPLEMENTAL SPECIFICATIONS

for

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

May 2, 1997

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

97004.01 GENERAL.

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

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

> The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.
>
> The number of trainee hours to be assigned will be shown in the contract documents.

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

97004.02 WORK CLASSIFICATIONS.

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

97004.03 MINORITIES AND WOMEN.

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

97004.04 TRAINING.

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

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

97004.05 PAYMENT.

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

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

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

97004.06 PAYMENT TO TRAINEES.

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

97004.07 RECORDS.

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

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

TRANSPORTATION DEPARTMENT[761](cont'd)

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

May 2, 1997

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

95004M.01 GENERAL.

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

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

> The Contractor shall provide on-the-job training aimed at developing full journeymen in the type of trade or job classification involved.
>
> The number of trainee hours to be assigned will be shown in the contract documents.

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

95004M.02 WORK CLASSIFICATIONS.

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

95004M.03 MINORITIES AND WOMEN.
Training and upgrading of minorities and women toward journeymen status is a primary objective of this training specification. Accordingly, the Contractor shall make every effort to enroll minority trainees and women by conducting systematic and direct recruitment through public and private sources likely to yield minority and women trainees to the extent that these persons are available within a reasonable area of recruitment. The Contractor shall be responsible for demonstrating the steps taken in pursuance of recruitment, prior to a determination of the Contractor being in compliance with this training specification. This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether a member of a minority group or not.

95004M.04 TRAINING.
An employee shall not be employed as a trainee in any classification in which an employee has successfully completed a training course leading to journeyman status or in which an employee has been employed as a journeyman. The Contractor shall satisfy this requirement by including appropriate questions in the employee application or by other suitable means. Regardless of the method used, the Contractor's records shall document the findings in each case.

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

95004M.05 PAYMENT.
Except as otherwise noted below, the Contractor will be reimbursed 80 cents per hour of training given to an employee on the contract work in accordance with an approved training program. As approved

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

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

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

95004M.06 PAYMENT TO TRAINEES.
Trainees shall be paid by the Contractor at least 60 percent of the appropriate minimum journeyman's rate specified in the contract for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period, unless apprentices or trainees in an approved existing program are enrolled as trainees on this project. In that case, the appropriate rates approved by the U. S. Departments of Labor or Transportation in connection with the existing program shall apply to all trainees being trained for the same classification who are covered by this training specification.

95004M.07 RECORDS.
The Contractor shall furnish the trainee a copy of the program the trainee will follow during the training. The Contractor shall provide each trainee with a certification showing the type and length of training satisfactorily completed.

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

ARC 7453A

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 159.5(11), 159.6(2), and 163.1(1), the Iowa Department of Agriculture and Land Stewardship hereby adopts the following amendment to Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of this amendment is to implement 1997 Iowa Acts, House File 694, by defining "designated animals," in order to include them in Iowa's brucellosis control and eradication program.

Notice of Intended Action was published in the June 18, 1997, Iowa Administrative Bulletin as **ARC 7304A**. The adopted amendment is identical to that published under Notice of Intended Action.

No comments were received.

This amendment is intended to implement Iowa Code chapter 164 as amended by 1997 Iowa Acts, House File 694.

This amendment will become effective September 17, 1997.

The following amendment is adopted.

Amend rule 21—64.47(163) by adding a new definition as follows:

64.47(8) "Designated animals" means only the following named bovine animals: beef cattle, dairy cattle, American bison or "buffalo," and their hybrids.

[Filed 7/25/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7438A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 5, "Iowa Industrial New Jobs Training Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7043A** on February 12, 1997. The IDED Board adopted the amendments on July 17, 1997.

The amendments prescribe that a format and timetable for reporting information regarding community college 260E projects and college procedures to the department be developed. The amendments also detail the responsibilities of the colleges in the area of monitoring, update Iowa Code references, and clarify that the goal of the training provided under the program is skill development and enhancement of Iowa's workforce.

A public hearing was held on March 5, 1997. The Department received written and oral comments about the proposed amendments from representatives of the area community colleges as well as bond counsel who market and sell the INJT certificates. The issues raised during the comment period included the following: the source and extent of the Department's program oversight authority; the effect of the proposed amendments on the marketability of the bonds; the perceived increase in administrative burden on the community colleges in complying with the rules; and specific concerns relating to those portions of the proposed amendments establishing penalty provisions for noncompliance and the rule which would require the colleges, before entering into an agreement, to review a business to determine whether it has a consistent pattern of violations of law.

The Department carefully reviewed the comments received. As to some issues, further clarification from the individuals submitting the comments was sought by the Department. Follow-up conversations and meetings were held to identify and clarify specific concerns. Significant disagreement remains between the community colleges and the Department concerning the Department's oversight authority for the program. Representatives of the community colleges expressed the opinion that the Department's role is limited to program "coordination" and cite Iowa Code section 260E.7 as authority for that position. The Department believes that the agency has administrative and oversight responsibilities under the program beyond mere "coordination."

Despite the differences/opinions concerning program "oversight" versus "coordination," the Department, in collaboration with representatives of the community colleges, has adopted final amendments. Based on the comments received, the following revisions were made to the proposed amendments:

Rule 261—5.1(15,260E) was revised to delete the word "administration" in the phrase "administration of the program" and insert "operation" in lieu thereof.

Rule 261—5.2(15,260E) was revised to clarify that the goal of the training provided under the program is skill development and enhancement of Iowa's workforce.

Subrule 5.4(1) was revised to permit the official statement to be submitted whenever it is finalized rather than within 30 days of the signing of the training agreement. Further, the adopted subrule 5.4(1) states that the Department will develop a format and timetable to be used by the community colleges for reporting relevant information to the Department. Subrule 5.4(1) provides some examples of the type of information to be included as part of the reporting process.

In subrule 5.4(2), paragraphs "d," "e," "f," and "g" were not adopted. These proposed paragraphs would have established minimum additional items for inclusion in each 260E agreement.

Proposed subrule 5.4(3) was not adopted. This subrule would have required a review by a community college of each training agreement to determine the following: if the business had a record of violations of law over a period of time that tended to show a consistent pattern of violation; whether there were any outstanding findings of noncompliance; and if the business were in compliance with these rules.

Rule 261—5.10(15,260E) was revised to remove any reference to "collection efforts." Subrule 5.10(3) was modified by eliminating the last two sentences which would have required the community colleges to notify the department of any unremedied events of noncompliance, to provide a description of the planned recovery efforts, and to submit copies of all related correspondence and documents. As adopted, subrule 5.10(3) requires documentation of community college monitoring activities and notice, on forms provided by the Department, of any event of default.

Proposed rule 261—5.14(15,260E) was not adopted. The proposed rule would have specifically authorized the De-

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

partment, upon request, to access records of a community college; required community colleges to take corrective action within the time set by the Department in its Notice of Noncompliance; and provided alternative actions that could be taken if a community college remained out of compliance despite a reasonable time period in which to remedy the problems identified.

These amendments are intended to implement Iowa Code sections 260E.7 and 15.108(6)"a."

These amendments will become effective on September 17, 1997.

The following amendments are adopted.

ITEM 1. Amend rules **261—5.1(260E)** to **261—5.13 (76GA,SF2351)**, parenthetical implementing authority, by adding "15" to each rule.

ITEM 2. Amend 261—5.1(15,260E) as follows:

261—5.1(15,260E) Authority. The authority for rules governing the development of training projects under the Iowa industrial new jobs training Act *and the operation of the program* is provided in Iowa Code ~~section~~ *sections* 260E.7~~.~~ *and 15.108(6)"a."*

ITEM 3. Amend 261—5.2(15,260E) as follows:

261—5.2(15,260E) Purpose. The purpose of the Act is to provide training for employees in new jobs with industries locating or expanding operations in Iowa and an incentive to industries considering locating or expanding operations in Iowa. *The goal of the training should be skill development and enhancement for Iowa's workforce.* The Iowa department of economic development is required to coordinate the training programs described in the Act.

ITEM 4. Amend rule **261—5.3(15,260E)**, definition of "Department," as follows:

"Department" means the Iowa department of economic development. Contacts with the department regarding activities referenced in this chapter shall be through the ~~bureau of state programs, division of workforce development~~ *division of administration, workforce development team.*

ITEM 5. Amend subrules 5.4(1) and 5.4(2) as follows:

5.4(1) Notification. The community college shall notify the department of all agreements deemed to be final and ready for project funding by sending a copy of the notice of agreement to the department within 30 days of the execution by all parties. *The corresponding official statement will be sent when it is completed.* The notice of final agreement shall provide all pertinent training services and financial details in the manner determined by the department. The notice shall be signed by the community college officials authorized by the college. All written agreements shall also be reported and verified through ~~annual~~ updates ~~coinciding with the state fiscal year and~~ *by the college, provided in a time frame specified by the department,* in the same manner that the annual report is provided to the department. ~~Notification format shall be determined by the department.~~ *Except where otherwise prescribed in these rules, the department, in conjunction with the community colleges, shall develop a format and timetable for reporting relevant information to the department. Such reporting shall include, but shall not be to limited to, information and official statements with respect to all final agreements and related certificate sales, information regarding college procedures for training agreement review and training project monitoring, as well as documentation of identified events of default, remedies and repayment policies.*

5.4(2) Additional agreement items. In addition to the provisions of an agreement described in Iowa Code section 260E.3, subsections 1 to 5, the agreement shall include the following items:

~~1~~ *a.* The length of time each new job category will be provided on-the-job training.

~~2~~ *b.* The completion date of all other training.

~~3~~ *c.* If the supplemental new jobs credit is to be utilized as authorized in ~~1994 Iowa Acts, chapter 1008, and 261—Chapter 62~~ *Iowa Code section 15.331 and 261—Chapter 58,* the agreement must be signed by the business(es), community college, and the department of revenue and finance for the use of an additional 1½ percent withholding to educate and train new employees.

ITEM 6. Amend 261—5.10(15,260E) as follows:

261—5.10(15,260E) Monitoring. ~~Monitoring will be conducted by the community colleges at least annually.~~

5.10(1) Monitoring system. Each community college shall establish a monitoring system which includes, at a minimum, a review of the business's compliance with the Act, these rules and the training agreement.

5.10(2) Annual review. Monitoring shall be conducted by the community colleges at least annually.

5.10(3) Documentation. Each community college shall document its monitoring efforts and promptly notify the department, on the forms provided, whenever it identifies an event(s) of default.

ITEM 7. Amend 261—5.12(15,260E) as follows:

261—5.12(15,260E) Coordination with communities. The community colleges will follow the provisions of ~~1994 Iowa Acts, chapter 1182~~ *Iowa Code section 403.21.*

[Filed 7/24/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7430A

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby adopts an amendment to Chapter 1, "Administration," Iowa Administrative Code.

Notice of Intended Action was published in the June 4, 1997, Iowa Administrative Bulletin, Volume XIX, No. 25, **ARC 7274A.**

This amendment clarifies the rule for cooperative work experience and is identical to that published under Notice except that the phrase "in addition to writing an associated thesis" was added thereby ensuring clarification of the rule.

No comments concerning the proposed amendment were received from the public.

This amendment shall become effective on September 17, 1997.

This amendment is intended to implement Iowa Code section 542B.14.

The following amendment is adopted.

Amend subrule 1.4(2), paragraph **"d,"** as follows:

d. Advanced education and special work experience. Part-time and summer work experience prior to graduation from college generally is not accepted toward satisfaction of professional experience requirements. However, cooperative work programs administered by engineering colleges *and verified on the transcript* will be evaluated on a case-by-case basis in order to determine whether the content and supervision of the program is such as would justify experience credit for student participation. *Cooperative work experience may be considered as half-time credit, with a maximum total allowance of 6 months (12 months of cooperative work) applicable toward the satisfaction of professional experience requirements.* Likewise, an applicant's advanced education ~~and~~ *or* military experience, *or both,* will be reviewed in order to determine if either is applicable toward the statutory requirements for experience.

An applicant who has earned a Master of Science degree that includes research experience, *in addition to writing an associated thesis,* from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar ~~master's~~ *Master's* degree in a discipline approved by the board, and has fulfilled the requirements for a Bachelor of Science degree may be granted a maximum of one-half year's experience credit. An applicant who has earned a Doctor of Philosophy degree from an institution in the United States of America with an accredited Bachelor of Science engineering degree program in the same discipline, or a similar doctoral degree in a discipline approved by the board, may be granted a maximum of one year's experience credit in addition to the one-half year for the ~~master's~~ *Master's* degree.

Teaching of engineering or surveying and mapping subjects at the level of assistant professor or higher in an accredited engineering or surveying and mapping program may be considered as experience, provided a minimum of one year of acceptable experience has been obtained in research, industry, consulting or land surveying. The board reserves the right to contact employers for information about the applicant's professional experience and competence.

[Filed 7/24/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7431A

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

This amendment updates language to reflect current standards of practice relating to pharmaceutical services in hospitals. The amendment also brings rules into conformity with Board of Pharmacy Examiners rules pertaining to licensure of hospital pharmacies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 1997, as ARC 7134A. A public hearing was held on April 15, 1997; however, no comments were received. The adopted amendment is identical to the one published under Notice except that clarifying language was added to the first sentence of subrule 51.14(3).

The Hospital Licensing Board approved the adoption of this amendment on February 26, 1997. The Board of Health approved the adoption of the amendment on May 14, 1997.

The amendment will become effective September 17, 1997.

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

The following amendment is adopted.

Rescind rule 481—51.14(135B) and insert in lieu thereof the following new rule:

481—51.14(135B) Pharmaceutical service.

51.14(1) General requirements. Hospital pharmaceutical services shall be licensed in accordance with Iowa board of pharmacy examiners rules in 657—Chapter 7.

51.14(2) Medication administration. All drugs and biologicals must be administered by, or under the supervision of, nursing or other trained personnel in accordance with hospital policies and procedures. The person assigned the responsibility of medication administration must complete the entire procedure by personally preparing the dose from a multiple-dose container or using a prepackaged unit dose, personally administering it to the patient, and observing the act of the medication being taken.

51.14(3) Medication orders. All orders for drugs and biologicals must be in writing and signed by the prescribing practitioner within 72 hours of prescribing the drug or biological. When telephone, oral or electronic mechanisms are used to transmit medication orders, they must be accepted only by personnel that are authorized to do so by hospital policies and procedures in a manner consistent with federal and state law.

51.14(4) Standing orders. Standing orders for drugs may be used for specified patients when authorized by the prescribing practitioner. These standing orders shall be in accordance with policies and procedures established by the appropriate committee within each hospital. At a minimum, the standing orders shall:

a. Specify the circumstances under which the drug is to be administered;

b. Specify the types of medical conditions of the patients for whom the standing orders are intended;

c. Be reviewed and revised by the prescribing practitioner on a regular basis as specified by hospital policies and procedures;

d. Be specific as to the drug, dosage, route, and frequency of administration; and

e. Be dated, signed by the prescribing practitioner within 72 hours, and included in the patient's medical record.

51.14(5) Self-administration of medications. Patients shall only be permitted to self-administer medications when specifically ordered by the prescribing practitioner and the prescribing practitioner has determined this practice is safe for the specific patient. The hospital shall develop policies and procedures regarding storage and documentation of the administration of drugs.

[Filed 7/24/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7427A

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 502.102(3)"c" and 502.607, the Insurance Division amends Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

The amendments implement state statutory changes that were made in response to federal legislation. Items 1 and 2 are proposed new rules which would replace state broker-dealer record-keeping and financial reporting requirements with federal standards. Item 3 is a proposed new rule which authorizes issuers of certain federal covered securities to pay a filing fee and make notice filings with the administrator. Item 3 also rescinds the existing rule on charitable gift annuities, which exempted these securities from the registration and filing provisions of Iowa Code chapter 502. The charitable gift annuity rule is no longer necessary because the federal Philanthropy Protection Act of 1995 preempts registration or qualification of charitable gift annuities under state securities laws. An exemption for these securities, therefore, is meaningless. Item 4 is a proposed new subrule which allows issuers, broker-dealers and agents to incorporate by reference previously filed consents to service of process. Item 5 is a proposed new rule which excludes certain individuals from the definition of agent. Item 6 is a proposed new rule which authorizes investment companies to make notice filings with the administrator.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 1997, as **ARC 7311A**. Two comment letters were received. The first letter requested clarification as to whether a new filing fee would be required in connection with subrule 50.24(3). No change was made to this subrule in response to the comment letter, as other rules address the issue of filing fees. The second letter was from the Investment Company Institute. The Institute supports adoption of the proposed rules, but suggested a couple of "technical" amendments. In response to the letter, the Division incorporated certain changes in order to clarify the process for amending, renewing, withdrawing or terminating a notice filing.

These amendments shall become effective on September 17, 1997.

These amendments are intended to implement 1997 Iowa Acts, House File 553.

The following amendments are adopted.

ITEM 1. Rescind rules **191—50.3(502)** and **191—50.4(502)** and adopt the following new rule in lieu thereof:

191—50.3 (502) Record-keeping requirements of broker-dealers.

50.3(1) Unless otherwise provided by order of the Securities and Exchange Commission, each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall make, maintain and preserve books and records in compliance with Securities and Exchange Commission rules 17a-3 (17 CFR 240.17a-3(1996)), 17a-4 (17 CFR 240.17a-4 (1996)), 15c2-6 (17 CFR 240.15c2-6 (1996)) and 15c2-11 (17 CFR 240.15c2-11 (1996)), Securities Exchange Act of 1934.

50.3(2) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

ITEM 2. Rescind and reserve rules **191—50.5(502)** and **191—50.6(502)** and adopt the following new rule in lieu thereof:

191—50.4(502) Minimum financial requirements and financial reporting requirements of broker-dealers.

50.4(1) Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 15c3-1 (17 CFR 240.15c3-1(1996)), 15c3-2 (17 CFR 240.15c3-2(1996)), and 15c3-3 (17 CFR 240.15c-3(1996)), Securities Exchange Act of 1934.

50.4(2) Each broker-dealer registered or required to be registered under Iowa Code chapter 502 shall comply with Securities and Exchange Commission rule 17a-11 (17 CFR 240.17a-11 (1996)) and shall file with the administrator copies of annual audited financial statements and notices of financial deficiencies, as required under rules 17a-5(d) (17 CFR 240.17a-5(d) (1996)) and 17a-11 (17 CFR 240.17a-11 (1996)), Securities Exchange Act of 1934.

50.4(3) To the extent that the Securities and Exchange Commission promulgates changes to the above-referenced rules, broker-dealers in compliance with such rules as amended shall not be subject to enforcement action by the administrator for violation of this rule to the extent that the violation results solely from the broker-dealer's compliance with the amended rule.

ITEM 3. Rescind rule 50.14(502) and adopt the following new rule in lieu thereof:

191—50.14(502) Notice filing procedures for rule 506 offerings.

50.14(1) An issuer offering a security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933 shall file a notice on SEC Form D, a consent to service of process on a form prescribed by rule 50.24(502), and pay a fee of $100 no later than 15 days after the first sale of such federal covered security in this state.

50.14(2) For purposes of this rule, the Securities and Exchange Commission "Form D" is defined as the document, as adopted by the Securities and Exchange Commission and in effect on September 1, 1996, as may be amended by the Securities and Exchange Commission from time to time, entitled "FORM D: Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

ITEM 4. Adopt the following new subrule 50.24(3):

50.24(3) Incorporation by reference consents to service of process previously filed. For purposes of consents to service of process required to be filed pursuant to 1997 Iowa Acts, House File 553, sections 7(1)"a" and 7(2), and Iowa Code sections 502.302(1) and 502.609, or the rules or regulations promulgated pursuant to any of the foregoing, a broker-dealer, agent, or issuer may incorporate by reference any consent to service of process previously filed with the administrator by such person or entity.

ITEM 5. Adopt the following new rule 191—50.34(502):

191—50.34(502) Agent exclusion.

INSURANCE DIVISION[191](cont'd)

50.34(1) Individuals offering securities for issuers pursuant to dividend reinvestment or stock purchase plans whose securities are federal covered securities pursuant to Section 18(b)(1) of the Securities Act of 1933 as amended in Pub. L. No. 104-290, are excluded from the definition of agent, provided that the individuals do not directly or indirectly receive a commission for soliciting any person in this state.

50.34(2) The administrator may deny or revoke this exclusion by order for a specific issue of securities, or for a category of securities when necessary in the public interest and for the protection of investors.

ITEM 6. Adopt the following new rule 191—50.51(502):

191—50.51(502) Notice filings for offerings of investment company securities.

50.51(1) Except as provided in subrule 50.51(5), no investment company that is registered under the Investment Company Act of 1940 or that has currently filed a registration statement under the Securities Act of 1933 is required to file with the administrator, either prior to the initial offer or after the initial offer in this state of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, a copy of any document which is part of a federal registration statement filed with the Securities and Exchange Commission or is part of an amendment to such federal registration statement.

50.51(2) Prior to the initial offer of a federal covered security in this state, an investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file with the administrator a notice filing on Form NF, together with a filing fee and consent to service of process.

50.51(3) A notice filing for which the term is about to expire may be renewed prior to expiration by filing with the administrator another notice on Form NF and payment of the applicable fee in accordance with Iowa Code section 502.208(2)"c" as amended by 1997 Iowa Acts, House File 553.

50.51(4) Amendments to notice filings may be made on Form NF and are effective upon receipt by the administrator. Withdrawal or termination of a notice filing may be made by filing Form NF or providing the administrator with other notice of the withdrawal or termination and shall be effective upon receipt by the administrator of such notice and all fees required by Iowa Code section 502.208 as amended by 1997 Iowa Acts, House File 553.

50.51(5) An investment company that is registered under the Investment Company Act of 1940 or that has filed a registration statement under the Securities Act of 1933 shall file, upon written request of the administrator and within the time period set forth in the request, a copy of any document, identified in the request, that is part of the federal registration statement filed with the Securities and Exchange Commission or part of an amendment to such federal registration statement.

50.51(6) An investment company that makes a notice filing under subrule 50.51(2) and pays an initial filing fee of $250 under 1997 Iowa Acts, House File 553, section 9(2)"c," shall pay an additional filing fee of $1,250 within 90 days after the notice filing's annual renewal date, or shall file on Form NF an annual or periodic report of the value of the federal covered securities offered or sold in this state, with a filing fee of one-tenth of 1 percent of the amount of securities sold in excess of $250,000.

[Filed 7/23/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7425A

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11(7), the Iowa Law Enforcement Academy hereby amends Chapter 6, "Decertification," Iowa Administrative Code.

This amendment establishes additional grounds and procedures for the discretionary revocation of a law enforcement officer's certification if the law enforcement officer fails to reimburse an employing agency for costs incurred by that agency in achieving certification training for the officer when the officer leaves that agency and is employed by another law enforcement agency under conditions specified in the amendment.

Notice of Intended Action was published in the June 18, 1997, Iowa Administrative Bulletin as **ARC 7305A**. The adopted amendment is identical to that published under Notice.

This amendment was approved by the Iowa Law Enforcement Academy Council on April 23, 1997.

This amendment is intended to implement Iowa Code section 80B.11(7).

This amendment will become effective on September 17, 1997.

The following amendment is adopted.

Amend subrule **6.2(2)** by adding a new paragraph **"d"** as follows:

d. The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency in achieving certification training for the officer when the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency contemporaneously with the date of employment which agreement specifically provides for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency. The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement that the officer understands that the employing agency may at its option seek the officer's decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona-fide employment of the

LAW ENFORCEMENT ACADEMY[501](cont'd)

officer and not for the purpose of achieving certification for the officer by way of "sponsorship" through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule; and

1. Have attached a copy of the agreement referred to in subparagraph (1) above;

2. State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

3. List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

4. State that written notice of the default has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

5. Specifically recommend that the Iowa law enforcement academy council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

6. Set out the last-known address of the officer, the officer's telephone number, and the officer's last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer's default, unless the Iowa law enforcement academy council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

(4) Upon receipt by the academy of a recommendation for decertification, the Iowa law enforcement academy council may commence decertification procedures by causing a notice to be served upon the officer as provided in subrule 6.3(2), with a copy of the recommendation for decertification attached thereto.

[Filed 7/23/97, effective 9/17/97]
[Published 8/13/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 8/13/97.

ARC 7444A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 31, "Receipts Subject to Use Tax," and Chapter 32, "Receipts Exempt from Use Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XIX, Number 26, on June 18, 1997, page 2049, as **ARC 7313A**.

Subrules 31.5(1), 31.5(2), and 32.11(2) are amended to implement 1997 Iowa Acts, Senate File 222, which provides that effective July 1, 1997, title fees, registration fees, vehicle lease tax, federal excise tax, optional service and warranty contracts, insurance, refundable deposits, and finance charges on these items are removed from the tax base for calculating the lease price for the purpose of computing the motor vehicle lease tax. These amendments also provide that if the parties to a lease agree that the vehicle lease tax will be paid by the lessee, the total cost of the tax shall not be included in the computation of lease price for the purpose of imposing the motor vehicle lease tax. These amendments also clarify that if a lease terminates prior to the expiration date stated in the lease, there will be no refund of motor vehicle lease tax paid, except as provided in Iowa Code section 322G.4. Also, the amendments to these subrules reflect that once a lease is terminated, additional use tax will be imposed if the vehicle is subsequently leased or used for a nonexempt purpose.

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

These amendments will become effective September 17, 1997, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code sections 423.4(16) and 423.7A.

The following amendments are adopted.

ITEM 1. Amend subrule 31.5(1) as follows:

31.5(1) Vehicles subject to long-term lease defined. Effective January 1, 1997, motor vehicles subject to registration with gross vehicle weight rating of less than 16,000 pounds, excluding motorcycles and motorized bicycles, which are actually leased for a period of 12 months or more, will be subject to a motor vehicle lease tax based upon the lease price as set forth in subrule 31.5(2). Such vehicles must be leased by a lessor licensed pursuant to Iowa Code chapter 321F. A registration receipt for a vehicle subject to registration or issuance of a certificate of title will not be issued until the tax is paid in the initial instance. If the lease is terminated prior to the expiration of the lease period, no refund will be allowed for tax previously paid on the monthly lease payments. *Effective July 1, 1997, if a lease is terminated prior to the expiration of the lease period, a refund of tax previously paid under this rule will be allowed under Iowa Code section 322G.4.* This definition of vehicles subject to long-term lease and subject to the tax under this rule includes vehicles leased under fixed-term or variable-term leases. Fixed-term lease means a lease contract in which the lease term is for a certain designated period of time. ~~An interest rate~~ *A payment amount* charged under a fixed-term lease can be fixed or variable. Variable-term lease means a lease contract in which the lease term may contain an initial stated lease period with additional ~~optional lease periods~~ *extension options* that may be exercised at the discretion of the lessee. ~~An interest rate~~ *A payment amount* charged under a variable-term lease may be fixed or variable. Exercise of an ~~option period~~ *extension* results in an extension of the original lease period for the purpose of this rule. A fixed- or variable-term lease may also contain a provision for adjustments which may be made by the lessor at the conclusion of the lease. Such adjustments may affect the rental receipts for the term of that lease. These adjustments may result in a debit, credit, or no change in the rental receipts. Such adjustments may include, but are not limited to, the condition of the vehicle, value of the vehicle, sale price of the vehicle, mileage incurred, and variable rate of interest charged during the initial term stated in the lease. Such an adjustment may result in a corresponding debit or credit of tax due from the lessor.

Vehicles entering this state under a lease entered into on or after January 1, 1997, will be subject to tax on the date the vehicle enters Iowa for the remaining lease period. Vehicles entering this state under an optional lease period exercised under a lease entered into on or after January 1, 1997, will be subject to tax on the date the vehicle enters Iowa for the remaining option period. A credit for tax paid on the lease for the lease period at issue where incidence of the tax was on the lessor and the tax was paid by the lessor to another state will be applied to the motor vehicle lease tax due on the lease from the lessor in Iowa.

When motor vehicle lease tax has been paid on a qualifying lease under this rule, and prior to the expiration of the lease the vehicle subject to the lease is destroyed by means such as fire, accident, or vandalism, to the extent that it constitutes a total loss of the vehicle, a credit for motor vehicle lease tax paid for the period remaining on the previous lease will be allowed when *another vehicle is substituted under the original lease or* a new lease is executed with the intent to replace the vehicle subject to the previous lease. To *initially* qualify for the credit there must be a total loss of the vehicle subject to the previous lease, ~~the~~ *a* new lease must be executed ~~by the same lessor and lessee, for lease of a vehicle of the same or similar make, model, year, and options as the vehicle subject to the previous lease, for the same lease period as the previous lease, for the same lease price, and the lease must contain the same lease terms as the previous lease~~ *or a vehicle must be substituted under the original lease. To qualify for the credit, the new lease or substituted vehicle under the original lease must meet the following: The new lease must be executed by the same lessor and lessee, for lease of a vehicle of the same or similar make, model, year and options as the vehicle subject to the previous lease, for the remaining lease period as the previous lease, for the same lease price and the lease must contain the same lease terms as the previous lease.*

Vehicles entering this state under a lease or lease option extending from a lease executed before January 1, 1997, will not be subject to the motor vehicle lease tax imposed under this rule. However, such vehicles will be subject to tax on the use of the vehicle in Iowa based upon the fair market value of the vehicle, payable by the lessor to the county treasurer at the time of registration or titling of the vehicle.

ITEM 2. Amend subrule 31.5(2) as follows:

31.5(2) Collection and computation of tax on long-term leases. For leases entered into on or after January 1, 1997, a motor vehicle lease tax is imposed on certain vehicles subject to registration which are leased under terms as defined in subrule 31.5(1). Motor vehicle lease tax shall be paid by the owner of the vehicle to the county treasurer, Iowa department of transportation, or Iowa department of revenue and finance. A registration receipt or certificate of title for the vehicle shall not be issued until the tax is paid in the initial instance. The amount subject to tax must be computed on each lease transaction based on the lease price. The lease price shall be computed by multiplying the number of months of the lease by the monthly lease payments, plus down payment, which shall include trade-ins and any additional costs or fees paid by the lessee. Capitalized costs paid by the lessee are generally included as part of the monthly lease payments. Capitalized costs may include, but are not limited to, rustproofing, floor mats, pinstriping, management fees, reserved charges, air conditioning, stereo, mud flaps, lease acquisition fee, *and* ~~title, license fees for the lease term,~~ finance charges~~, extended warranties, service contracts, federal luxury tax, and various types of insurance coverage~~. Down payment is defined for the purpose of this rule as any payment or trade-in made by the lessee for the purpose of reducing the lease price. In certain instances, there are costs associated with the lease and entering into the lease, which are not refundable, that are negotiated by the lessor and lessee, resulting in an agreement that these costs will be paid by the lessee separately and in addition to the monthly lease payments. Costs for such items, whether normally capitalized or not, which are paid separately by the lessee in order to reduce the lease price, shall be treated as a down payment and shall be added in the computation of the lease price. Trade-in is treated as a down payment and is defined for the purpose of this rule as tangible personal property which is traded by the lessee to the lessor in order to reduce the lease price. The value of the trade-in shall be added in the computation of the lease price. The lease price shall not include any manufacturer's rebate ~~and~~ *or refundable* deposit.

Effective for leases entered into on or after July 1, 1997, the lease price shall not include manufacturer's rebate, refundable deposit, title fee, registration fee, vehicle lease tax imposed under this rule, federal excise taxes attributable to the sale of the vehicle to the owner or to the lease of the vehicle by the owner, optional service or warranty contracts subject to tax under Iowa Code section 422.43(6), insurance, or any finance charge imposed on these excluded items. Any item excluded from the taxable lease price shall be documented by the owner by maintaining an adequate record of the amount of each item excluded. If a lessor and lessee enter into an agreement that the tax imposed under this rule shall be paid by the lessee, either in a lump sum payment or as part of the monthly lease payments, the total cost of the tax shall not be included in the computation of the lease price for the purpose of imposing the tax under this rule. Deposit is defined for the purpose of this rule as a security which is refundable based upon the terms of the lease. The lease price shall not include a roll-over deficiency from a previously purchased or leased vehicle ~~where~~ *to the extent* it can be shown that tax had been paid on the amount to be rolled over from the previously purchased or leased vehicle. *For instance, lessee A has a previously purchased vehicle with an outstanding loan balance of $4,000. Lessee B has a previously leased vehicle with a total of outstanding payments of $4,000. As part of the previous transactions that resulted in these outstanding balances, use tax was previously paid on the $4,000 balances by lessees A and B. Each lessee now wishes to lease a new vehicle and pay the outstanding balance owed by each as part of the monthly lease payments for the new vehicles. The balances for each lessee may be rolled over in the lease costs to be paid by the lessees. However, the amount of the balances that are rolled over are excluded from each of the computations of the lease price under this rule.*

EXAMPLE 1. Iowa lessor leases a vehicle on January 20, 1997, for use in Iowa for a period of 36 months. The total lease price is $18,814.00 which includes all capitalized costs that were negotiated as part of the lease. Incidence of the tax is upon the lessor. The lessor and lessee did not negotiate nor did they agree to include the cost of the motor vehicle lease tax as part of the lease price. The total lease price to be reported by the lessor for computation of the tax at the time of registration or titling of the vehicle is $18,814.00. The motor vehicle lease tax due on this lease would be $940.70 ($18,814.00 × 5%) payable by the lessor to the county treasurer at the time of registration or titling of the vehicle. The monthly lease payment to be paid by the lessee is $522.61 ($18,814.00 ÷ 36 months).

EXAMPLE 2. Iowa lessor enters into a lease with Dave Jones on January 8, 1997, for the lease of a vehicle for use in Iowa for a period of 36 months. The monthly lease payments for the vehicle are computed to include rustproofing, floor mats, and various other capitalized costs. However, based on

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

an agreement between Dave Jones and the lessor, costs of the mud flaps and a stereo system are not included in the monthly lease payments. Instead, the lessor and Dave Jones negotiate and agree to allow Dave Jones to pay the total for the mud flaps and stereo separately. Dave Jones executes a check payable to the lessor for the total sum of such fees. The total sum paid in the separate check issued by Dave Jones for the mud flaps and stereo is considered a down payment and must be included in the computation of motor vehicle lease tax as a cost that is part of the total lease price.

A fixed- or variable-term lease that is subject to the motor vehicle lease tax under this rule may contain a provision allowing adjustments to be made by the lessor at the conclusion of the lease which may affect the rental receipts for the term of that lease. Such adjustments may result in a debit, credit, or no change in the rental receipts. Such adjustments may include, but are not limited to, the condition of the vehicle, value of the vehicle, sale price of the vehicle, mileage incurred, and variable ~~rate of interest~~ *payment amount* during the initial qualifying lease period. Such an adjustment may result in a corresponding debit or credit of tax due from the lessor. If a lease is a variable-term lease with a variable ~~interest rate~~ *payment amount*, the lease payment for the initial minimum 12-month period shall be computed by applying the ~~interest rate~~ *payment amount* in effect during the date the lease is executed between the parties. If the ~~interest rate~~ *payment amount* varies during that initial minimum 12-month period resulting in a debit or credit of tax previously paid for that period, such will be computed as an adjustment made at the conclusion of the lease.

Tax due under this rule for a fixed-term lease will be due on the entire lease term contracted for between the parties. Tax on a variable-term lease shall be based on the entire initial term stated in the lease.

Tax on a qualifying lease under this rule will be due at the time the vehicle subject to the lease is required to be registered or titled. Tax on any optional lease periods will be considered due at the time the optional lease period is exercised under the lease. Tax on transactions requiring registration or titling of a vehicle in this state will be remitted to the county treasurer or department of transportation at the time of registration or titling. Tax on transactions not involving a vehicle or vehicles having to be registered or titled in this state shall be remitted to the department of revenue and finance. Such transactions include the re-lease of the same vehicle or vehicles involving the same lessor and lessee or exercise of an option under a lease by a lessee.

Incidence of motor vehicle lease tax falls upon the owner/lessor of the vehicle. Therefore, the lessee cannot invoke any exemptions from the motor vehicle lease tax.

Reporting and remittance of tax due to the Iowa department of revenue and finance will be remitted on or before 15 days from the last day of the month that the tax becomes due. Failure to timely report or remit any of the tax when due under this rule will result in penalty and interest being imposed on the tax due pursuant to Iowa Code sections 423.18 and 423.23.

The county treasurer or the state department of transportation shall require every applicant for a registration receipt for a vehicle subject to this tax to submit the total lease price computed in the manner indicated in subrule 31.5(2) to be reported on a form designated by the director of revenue and finance. Also see 701—34.9(423).

On or before the tenth day of each month the county treasurer or the state department of transportation will remit to the department of revenue and finance the amount of tax collected during the preceding month.

EXAMPLE 3. Licensed lessor located in Iowa contracts with Joe Smith to lease a new automobile for use in Iowa for a contract period of 12 months. Motor vehicle lease tax would be due by the lessor payable to the county treasurer at the time of registration based on the lease price for the 12-month lease period.

EXAMPLE 4. Licensed lessor located in Iowa contracts with Joe Smith to lease a used automobile for use in Iowa for a contract period of 12 months. Motor vehicle lease tax was due and paid to the county treasurer at the time of registration based on the lease price for the 12-month period. Prior to the expiration of the 12-month lease period, the lease is terminated. Upon return of the vehicle the lessor uses the vehicle for a company car. The lessor cannot receive a refund of the motor vehicle lease tax that was paid for the portion of the remaining lease period because, under the statute, refunds of motor vehicle lease tax are not allowed. In addition, the lessor would be required to pay use tax on the fair market value of the vehicle for use of that vehicle for a purpose other than for lease. See Iowa Code section 423.4(16) and 701—31.4(422,423) and 32.11(423).

EXAMPLE 5. Licensed lessor located in Iowa leases a vehicle for a 24-month period. Motor vehicle lease tax is paid on the lease price for the 24-month period. After 18 months, the lease is terminated. The lessor cannot receive a refund of the tax paid on the remaining lease period.

EXAMPLE 6. On January 20, 1997, a licensed lessor located in Iowa leases an automobile to Sally Jones for use in Iowa for a contract period of 12 months with additional 30-day lease options which can be exercised after the 12-month lease has been fulfilled. The lessor must pay motor vehicle lease tax on the lease price for the 12-month period payable to the county treasurer at the time of registration. In addition, the 30-day option periods are considered to be extensions of the original lease. As a result, the lessor must pay motor vehicle lease tax to the Iowa department of revenue and finance on each 30-day lease option, due at the time exercised by Sally Jones. Tax must be remitted to the Iowa department of revenue and finance on or before 15 days from the last day of the month in which the tax became due.

EXAMPLE 7. On March 17, 1997, a licensed lessor located in Iowa leases a fleet of ten automobiles to XYZ insurance company for use in Iowa for a lease period of 12 months. Motor vehicle lease tax is due on the lease price for each of the ten vehicles for the 12-month lease period payable to the county treasurer.

EXAMPLE 8. Licensed lessor located in Illinois enters into a lease with Sally Smith on January 8, 1997, to lease an automobile for a lease period of 12 months. With 4 months remaining on the lease, Sally moves to Iowa and the vehicle is titled in Iowa. Motor vehicle lease tax would be due on the date of use in Iowa based on the lease price for the remaining 4 months under the lease. The tax due would be payable by the lessor to the county treasurer at the time the vehicle is registered or titled in Iowa. However, credit would be allowed for *a similar* tax previously paid on the lease for the lease period at issue, paid by the lessor to another state to be applied against the Iowa lease tax due, if incidence of the tax paid to the other state also fell upon the lessor. *This credit against Iowa lease tax would be allowed regardless of the tax base used by the other state for the computation of the tax previously paid. If the tax qualifies for the credit by meeting the previously mentioned criteria, credit against the Iowa tax owed may be computed by completing the following steps:*

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

Step 1. Compute the Iowa lease tax based on the remaining lease period from the date the vehicle enters Iowa through the expiration date of the lease. See subrule 31.5(2).

Step 2. Determine the amount of tax paid to the other state for the remaining lease period. To determine this, do the following:

1. Divide the total amount of tax paid to the other state by the entire term of the lease. This will result in the amount of monthly tax paid on the lease.

2. Multiply the monthly tax paid by the months remaining on the lease term from the date the vehicle entered Iowa through the expiration date of the lease.

Step 3. Compare the amount of tax paid to the other state for the remaining period (result in Step 2) to the amount of tax due to the state of Iowa for the remaining lease period (result in Step 1). The amount of Iowa vehicle lease tax due, if any, will depend upon whether the other state will allow for a refund of the tax previously paid.

1. If the other state will refund the tax previously paid for the remaining lease period, then the amount of Iowa vehicle lease tax computed in Step 1 is due.

2. If the tax paid to the other state for the remaining lease period is greater and the other state will not refund the tax previously paid for the remaining lease period, then no additional Iowa lease tax is due.

3. If the amount of tax due to the state of Iowa for the remaining lease period is greater and the other state will not allow a refund of the tax previously paid, then the difference between the amount of tax due to the state of Iowa for the remaining lease period and the tax paid to the other state for the remaining lease period is the amount owed (result in Step 1 – result in Step 2).

EXAMPLE 9. Licensed lessor located in Minnesota enters into a lease with Joe Smith on November 21, 1997, to lease an automobile for a lease period of 12 months with 30-day option periods to be exercised at Joe Smith's discretion at the conclusion of the initial 12-month lease period. After one year and 10 days under the lease, Joe moves to Iowa. The vehicle is titled in Iowa. Motor vehicle lease tax is due and payable by the lessor to the county treasurer on a prorated basis for the days remaining on the exercised option period. ~~Credit~~ *If incidence of the tax previously paid to the other state was on the lessor, credit* would be allowed for ~~lease~~ *a similar* tax previously paid by the lessor to ~~another~~ *the other* state for the lease period at issue to be applied against the Iowa lease tax due *(see Example 8)*. If additional option periods are exercised by Joe under the lease, motor vehicle lease tax will be due at the time the option is exercised, payable by the lessor to the Iowa department of revenue and finance. Tax must be remitted to the Iowa department of revenue and finance on or before 15 days from the last day of the month in which the tax became due.

EXAMPLE 10. Iowa lessor enters into a lease with Sally Jones on August 11, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months. Motor vehicle lease tax is not due on this because the lease was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

EXAMPLE 11. Iowa lessor enters into a lease with Joe Smith on January 1, 1996, for use of a vehicle in Iowa. The lease is for a period of 12 months and contains 30-day options that may be exercised by Joe Smith at the conclusion of the initial 12-month period. On January 1, 1997, Joe Smith exercises a 30-day option. Motor vehicle lease tax is not due on the exercised option period because the option is an extension of the original lease which was entered into prior to January 1, 1997, the effective date of the motor vehicle lease tax.

Examples 12 and 13 offer guidance for computing the tax imposed in this rule for leases entered into prior to July 1, 1997.

EXAMPLE 12. Lessor and lessee located in Iowa enter into a qualifying lease agreement on March 9, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $456; title, $35; license, $164; and tinted windows, $225. The total lease price of the leased vehicle, including the items separately paid by personal check by the lessee, is $10,000. The amount to be reported to the county treasurer at the time of registration or titling of the vehicle is $10,000. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $500 ($10,000 × 5% = $500).

EXAMPLE 13. Lessor and lessee located in Iowa enter into a qualifying lease agreement on June 24, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, and license as a capitalized cost over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, is $10,000. To compute the total lease price to be reported to the county treasurer when the lease price includes tax as a negotiated capitalized cost of the lease to be paid by the lessee, the owner/lessor may multiply the total lease price of $10,000 by the factor of ~~1.053~~ *1.0526316* which results in the sum of ~~$10,530~~ *$10,526.32*. The total of ~~$10,530~~ *$10,526.32* is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is ~~$526.50~~ *$526.32* (~~$10,530.00~~ *$10,526.32* × *5%* = ~~$526.50~~ *$526.32*).

Effective July 1, 1997, the following examples may be used for guidance in computing the lease price and motor vehicle lease tax imposed under this rule.

EXAMPLE 14. Lessor and lessee located in Iowa enter into a qualifying lease agreement on July 12, 1997. The price negotiated by the parties for the lease is $9,120, which will be paid by the lessee in 36 monthly installments. The lessor and lessee also agreed that the lessee will separately pay by personal check the total cost of each of the following items: tax, $467.25; title, $35; license, $164; and tinted windows, $225. However, effective July 1, 1997, tax, title fees, and license fees are not to be included in the computation of the lease price. As a result, the amount to be reported to the county treasurer at time of registration or titling of the vehicle is $9,345 ($9,120 – the total monthly payments + $225 – cost of the tinted windows = $9,345). The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer is $467.25 ($9,345 × 5% = $467.25).

EXAMPLE 15. Lessor and lessee located in Iowa enter into a qualifying lease agreement on August 11, 1997. The lessor and lessee agree that the lessee will provide a down payment, trade-in, and pay the tax, title, license, pin striping, and cost of an upgraded stereo system as capitalized costs over the term of the lease agreement. The total lease price, including the down payment, trade-in, and capitalized costs, but excluding the tax, title, and license to be paid by the lessee in the monthly lease payments, is $10,000. The total of $10,000

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

is the total lease price to be reported by the owner/lessor to the county treasurer or department of transportation at the time of registering or titling of the vehicle. The amount of tax due from the owner/lessor of the vehicle at the time of registration or titling to the county treasurer or department of transportation is $500 ($10,000 × 5% = $500).

ITEM 3. Amend rule **701—31.5(423)**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 421.6, 421.17, *423.4(16),* and 423.25 and Iowa Code ~~sections 423.4(16) and~~ *section* 423.7A as amended by ~~1996~~ *1997* Iowa Acts, ~~chapter 1125~~ *Senate File 222.*

ITEM 4. Amend subrule 32.11(2) as follows:

32.11(2) Long-term lease. On or after January 1, 1997, the use of a vehicle subject to registration in this state is exempt from tax if the following conditions exist:

a. The vehicle subject to registration is purchased for lease and titled by a lessor licensed pursuant to Iowa Code chapter 321; and

b. The vehicle has a gross vehicle weight rating of less than 16,000 pounds; and

c. The vehicle is actually leased for a period of 12 months or more; and

d. The lease is subject to taxation under Iowa Code section 423.7A. See rule 701—31.5(423) regarding long-term leases.

A lessor may maintain the exemption from use tax under Iowa Code section 423.4(16) for a 12-month qualifying lease that terminates at the conclusion of or prior to the contracted expiration date, if the lessor does not use the vehicle for any purpose other than for lease. ~~Once~~ *Unless an exemption applies, once* the vehicle is used by the lessor for a purpose other than for lease, the exemption from use tax under Iowa Code section 423.4(16) no longer applies and use tax is due on the fair market value of the vehicle, payable to the Iowa department of revenue and finance (e.g., if the vehicle is used by the lessor as a company car). *If a vehicle is subsequently leased and subject to tax, tax will be due and owing on any subsequent lease transaction.* However, if a lessor exclusively maintains the vehicle for sale, then use tax is due on the purchase price of the vehicle at the time of sale and the tax is due and payable under the provisions of Iowa Code chapter 423.

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ARC 7429A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 23, 1997, adopted Chapter 415, "Driver's Privacy Protection—Certificates of Title and Vehicle Registration," Iowa Administrative Code.

This chapter addresses records pertaining to certificates of title and vehicle registration.

Notice of Intended Action for these rules was published in the June 18, 1997, Iowa Administrative Bulletin as **ARC 7302A.**

1996 Iowa Acts, chapter 1102, was enacted to implement the federal Driver's Privacy Protection Act of 1994. The federal Act pertains to disclosure of personal information about individuals from state motor vehicle records. The Act defines "motor vehicle record" as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." 1996 Iowa Acts, chapter 1102, provides for Departmental adoption of the Act. It also provides that personal information shall be disclosed if the individual whose personal information is requested has not elected to prohibit disclosure of the information to the general public. The Department is required to give notice of this provision on forms for issuance or renewal of driver's licenses, titles, registrations, and nonoperator's identification cards.

As provided in the federal Act, the Iowa legislation and this chapter, "personal information" includes an individual's photograph, social security number, driver's license or nonoperator's identification card number, name, address (but not ZIP code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status.

These rules are identical to the ones published under Notice except that the chapter title was changed to differentiate this chapter from 761—Chapter 611 (also published in this Bulletin as **ARC 7428A**).

These rules are intended to implement Iowa Code section 321.11.

These rules will become effective September 17, 1997.

Rule-making action:

Adopt new 761—Chapter 415 as follows:

CHAPTER 415
DRIVER'S PRIVACY PROTECTION—CERTIFICATES OF TITLE AND VEHICLE REGISTRATION

761—415.1(321) Applicability.

415.1(1) This chapter applies to personal information about vehicle owners in records pertaining to certificates of title, registration receipts and registration renewal receipts issued by the department or the county treasurers.

415.1(2) Rules regarding personal information in records pertaining to drivers' licenses and nonoperators' identification cards are found in 761—Chapter 611.

761—415.2(321) Adoption. The department adopts the Driver's Privacy Protection Act of 1994 (18 U.S.C. § 2721 et seq.) for certificates of title, registration receipts and registration renewal receipts.

761—415.3(321) Definitions.

"Act" means the Driver's Privacy Protection Act of 1994.

"Driver's license" means "license" as defined in rule 761—600.1(321).

"Law enforcement agency" includes, but is not limited to, county attorneys, federal district attorneys, attorneys general, and state and federal departments of justice.

"Motor vehicle record" as used in the Act means any record that pertains to a driver's license, nonoperator's identification card, certificate of title, registration receipt, or registration renewal receipt issued by the department or the county treasurer.

TRANSPORTATION DEPARTMENT[761](cont'd)

"Personal information" means information that identifies an individual, including the items listed in Iowa Code section 321.11. "Personal information" also includes an individual's nonoperator's identification card number.

"Vehicle owner" as used in this chapter means a vehicle owner who is an individual, not a company, organization or other legal entity.

761—415.4(321) Requirements and procedures. Notwithstanding Iowa Code chapter 22 and 761—Chapter 4, the following procedures implement the Act and Iowa Code section 321.11 as they pertain to records relating to certificates of title, registration receipts and registration renewal receipts:

415.4(1) The application for certificate of title/registration shall contain an area that allows the applicant vehicle owner to elect to prohibit disclosure of owner's personal information to the general public.

a. This election applies only to the vehicle being titled or registered.

b. If an application that does not have such an area is submitted and there is no other indication on the application that the owner wishes to prohibit disclosure, the owner's personal information shall be open to the general public until the owner submits a written request to prohibit disclosure.

415.4(2) The registration renewal notice shall contain an area that allows the vehicle owner to elect to prohibit disclosure of the owner's personal information to the general public.

a. This election shall apply only to the vehicles listed on the renewal notice.

b. If the renewal notice is not returned and there is no other written request prohibiting disclosure, the owner's personal information shall be open to the general public until the owner submits a written request to prohibit disclosure.

415.4(3) A vehicle owner may elect to prohibit disclosure of the owner's personal information to the general public by submitting a written request to the county treasurer of the county where the vehicle is registered or to the department if the vehicle is registered by the department.

a. The request shall include the owner's name, social security number and address, the plate number, year, make and vehicle identification number of each vehicle to which the request applies, the signature of the owner, and the date the owner signed the request.

b. A request to prohibit disclosure may be made at any time.

415.4(4) If a vehicle owner elects to prohibit disclosure:

a. The county treasurer shall mark the record of a vehicle registered at the county level. If the registering county treasurer did not issue the title for the vehicle, the registering county treasurer shall send a written notice to the titling county treasurer or to the department if the department issued the title. Both entities shall mark the appropriate records.

b. The department shall mark the record of a vehicle registered by the department. If the department did not issue the title for the vehicle, the department shall send a written notice to the titling county treasurer. Both entities shall mark the appropriate records.

c. The owner's personal information shall not be disclosed to the general public except as provided for in the Act.

415.4(5) If a vehicle owner who has elected to prohibit disclosure later wishes to allow disclosure, thus rescinding the earlier election, the vehicle owner shall appear before the county treasurer of the county where the vehicle is registered or before the department if the vehicle is registered by the department and submit a written request to open the record.

a. The request shall include the owner's name, social security number and address, the plate number, year, make and vehicle identification number of each vehicle to which the request applies, the signature of the owner, and the date the owner signed the request.

b. The owner must present a valid photo driver's license, valid photo nonoperator's identification card, or other acceptable photo identification card that identifies the owner.

c. If a vehicle owner elects to rescind the earlier election and allow disclosure, the county treasurer or department shall mark the appropriate records in the manner described in subrule 415.4(4).

415.4(6) The department or county treasurer may require a person or entity who requests personal information about an individual:

a. To provide proof of identity or authority to secure access to the information.

b. To submit the request in writing.

c. To sign a certified statement, affidavit or contract listing the specific reasons justifying access to the information and provide any proof necessary to establish relevant facts.

415.4(7) The department does not provide the waiver procedure described in the Act (codified as §2721(d)).

415.4(8) The department shall not release any personal information regarding a motor vehicle record if the request is made by plate number, except as provided in Iowa Code section 321.11.

415.4(9) If a request for personal information is made by something other than plate number, the personal information shall be disclosed if the individual whose personal information is requested has not elected to prohibit disclosure of the information to the general public.

These rules are intended to implement Iowa Code section 321.11.

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ARC 7428A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on July 23, 1997, adopted Chapter 611, "Driver's Privacy Protection—Driver's License and Nonoperator's Identification Card," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the June 18, 1997, Iowa Administrative Bulletin as ARC 7301A.

1996 Iowa Acts, chapter 1102, was enacted to implement the federal Driver's Privacy Protection Act of 1994. The federal Act pertains to disclosure of personal information about individuals from state motor vehicle records. The Act defines "motor vehicle record" as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." 1996 Iowa Acts, chapter 1102, provides for Departmental adoption of the Act. It also provides that personal information shall be disclosed if the individual whose personal information is requested has not elected to prohibit disclosure of the information to the general public. The Department is required to give notice of this provision on forms for issuance or renewal of driver's licenses, titles, registrations, and nonoperator's identification cards.

As provided in the federal Act, the Iowa legislation and this chapter, "personal information" includes an individual's photograph, social security number, driver's license or nonoperator's identification card number, name, address (but not ZIP code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations and driver's status.

These rules are identical to the ones published under Notice except that the chapter title was changed to differentiate this chapter from 761—Chapter 415 (also published in this Bulletin as **ARC 7429A**).

These rules are intended to implement Iowa Code section 321.11.

These rules will become effective September 17, 1997.

Rule-making action:

Adopt new 761—Chapter 611 as follows:

CHAPTER 611
DRIVER'S PRIVACY PROTECTION—
DRIVER'S LICENSE AND
NONOPERATOR'S IDENTIFICATION CARD

761—611.1(321) Applicability.

611.1(1) This chapter applies to personal information in records pertaining to drivers' licenses and nonoperators' identification cards. In addition to information on current licensees and cardholders, these records include information on individuals who do not currently hold a driver's license or nonoperator's identification card. Operating records and records of driver sanctions are two examples.

611.1(2) Rules regarding personal information about vehicle owners in records pertaining to certificates of title and vehicle registration are found in 761—Chapter 415.

761—611.2(321) Adoption. The department adopts the Driver's Privacy Protection Act of 1994 (18 U.S.C. § 2721 et seq.) for driver's license records and nonoperator's identification card records.

761—611.3(321) Definitions.

"Act" means the Driver's Privacy Protection Act of 1994.

"Driver's license" means "license" as defined in rule 761—600.1(321).

"Law enforcement agency" includes, but is not limited to, county attorneys, federal district attorneys, attorneys general, and state and federal departments of justice.

"Motor vehicle record" as used in the Act means any record that pertains to a driver's license, nonoperator's identification card, certificate of title, registration receipt, or registration renewal receipt issued by the department or the county treasurer.

"Personal information" means information that identifies an individual, including the items listed in Iowa Code section 321.11. "Personal information" also includes an individual's nonoperator's identification card number.

761—611.4(321) Procedures. Notwithstanding Iowa Code chapter 22 and 761—Chapter 4, the following procedures implement the Act and Iowa Code section 321.11 as they pertain to driver's license records and nonoperator's identification card records:

611.4(1) The application for a driver's license and the application for a nonoperator's identification card shall contain an area that provides an opportunity for the applicant to elect to prohibit disclosure of the applicant's personal information to the general public.

611.4(2) An individual may also elect to prohibit disclosure of that individual's personal information to the general public by submitting a written request to the office of driver services at the address in rule 761—600.2(17A).

a. The request shall include the individual's full name as shown on the license or card or in the record, current address, social security number, Iowa license or card number, if any, and signature.

b. A request to prohibit disclosure may be made at any time.

611.4(3) An individual who has elected to prohibit disclosure may rescind the earlier election by submitting a written request to the office of driver services.

a. The request shall include the individual's full name as shown on the license or card or in the record, current address, social security number, Iowa license or card number, if any, and signature.

b. An individual requesting to rescind an earlier election must appear before an Iowa driver's license examiner with the request to rescind and present a valid photo driver's license, valid photo nonoperator's identification card, or other photo identification card approved by the office of driver services that identifies the individual.

c. A request to rescind an earlier election may be made at any time.

611.4(4) The department may require a person or entity who requests personal information about an individual:

a. To provide proof of identity or authority to secure access to the information.

b. To submit the request in writing.

c. To sign a certified statement or affidavit listing the specific reasons justifying access to the information and provide any proof necessary to establish relevant facts.

611.4(5) The department does not provide the waiver procedure described in the Act (codified as §2721(d)).

These rules are intended to implement Iowa Code section 321.11.

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ARC 7450A

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 476.1, 476.2, 476.3, and 476.102 and the Telecommunications Act of 1996, 47 U.S.C. Section 254, the Utilities Board (Board) gives notice that on July 25, 1997, the Board issued an order in Docket No. RMU-97-5, In re: Universal Service—Schools and Libraries, "Order Adopting Rules," to adopt proposed rule 199 IAC 38.8(476), to address the discount rate to be applied for intrastate telecommunication services to elementary schools, secondary schools, and libraries.

On April 24, 1997, the Board issued an order in this docket to consider the adoption of proposed rule 199 IAC

38.8(476). The proposed rule making was published in IAB Vol. XIX, No. 24 (5/21/97), p. 1879, as **ARC 7239A**. Comments on the proposed rule were filed by AT&T Communications of the Midwest, Inc., GTE Midwest Incorporated, the Consumer Advocate Division of the Department of Justice, and U S West Communications, Inc. An oral presentation was held on June 26, 1997.

All parties filing comments supported proposed rule 199 IAC 38.8(476). The rule sets the discount rate for intrastate telecommunication services for schools and libraries equal to the discount rate the Federal Communications Commission establishes for interstate telecommunications services for these entities.

This rule is intended to implement Iowa Code section 476.102 and the Telecommunications Act of 1996.

This rule will become effective on September 17, 1997.

The following rule is adopted.

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

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

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CORRECTIONS DEPARTMENT[201]

At its July, 1997 meeting the Administrative Rules Review Committee voted to object to **ARC 7298A** on the grounds that the filing was an unreasonable use of the "emergency" rulemaking procedures as set out in Iowa Code sections 17A.4 and .5. This filing amends rule 201 IAC 20.20, and provides that one half of the funds generated by telephone commissions will be retained by the institution, while the other half will be distributed by the central office. It was the feeling of the committee this was a significant change in policy that should have been preceded by a notice of intended action and a full opportunity for discussion before it was implemented. Moreover, question exists whether this particular filing "confers a benefit on the public", as required by Iowa Code section 17A.5, since there is no explanation as to how the money will be spent by the central office.

The effect of this objection is to terminate this emergency filing 180 days after the objection is filed in the Administrative Code Editor's office.

SECRETARY OF STATE[721]

At its July, 1997 meeting the Administrative Rules Review Committee voted to object to **ARC 7295A** on the grounds that the filing goes beyond the authority of the agency. This filing creates new rules, 721 IAC 21.30, relating to county election ordinances, and 721 IAC 21.31, relating to city election ordinances. The rule implements House File 636, which provides in part:

Section 1. NEW SECTION. 39.1A ELECTIONS AUTHORIZED.

Only those public measures which are specifically authorized or required by state law to be put before the voters as a public measure shall be submitted to the voters at an official election. Only those offices which are specifically authorized or required by state law to be filled by the voters at an election shall be placed on the ballot at an official election.

This section does not prohibit the governing body of a city or county from adopting an ordinance providing for elections on matters under the jurisdiction of the governing body.

The last sentence of this legislation is cited as authority for rule which establish procedures for initiative and referendum. It is the opinion of the committee that such expansive interpretation of such brief legislation is unwarranted. The legislation contains no reference to initiative or referendum and it is dubious whether the legislative body would have enacted any legislation containing such a reference; in the past the legislature has declined to enact such proposals. Initiative and referendum are concepts that would have a significant impact on the operation of local government. For that reason these mechanisms should only be created through specific legislation clearly intended for that purpose and not through an interpretive rule.

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED JULY 23, 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.

No. 96-1548. IN RE ESTATE OF METTEL.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by McGiverin, C.J.

(8 pages $3.20)

This case involves the purported bequest, in a document extrinsic to a will, of the testatrix's bank savings account to her niece, Nancy Smith. Kathryn Mettel executed a will in 1978 and a codicil in 1989. The codicil provided for the disposition of personal property by means of written documents extrinisic to the will. No party challenges the validity of the will or the codicil. In November 1995, Mettel dated and signed several documents, each of which was entitled "Instructions for Distribution of Specified Personal Property Authorized in my Last Will and Testament." One of the documents listed, among other items, "what's left of my [savings]" and identified Smith as the distributee. Smith filed a claim against Mettel's estate seeking $62,939.43, the amount remaining in Mettel's savings account at the time of her death. The claim was based both on the "Instructions" document and on Smith's alleged caretaking services to Mettel. The executor of Mettel's estate, Dubuque Bank & Trust Company, disallowed the claim and filed a motion for partial summary judgment, arguing that a bank savings account is not tangible personal property and cannot be transferred by means of a writing separate from the will. The district court granted the motion. Smith appealed. Smith contends that individuals have a natural or constitutional right to make testamentary dispositions of their personal property. Alternatively, she argues that the term "tangible personal property" in Iowa Code section 633.276 (1995) should be interpreted as encompassing a bank account. **OPINION HOLDS:** I. We reject Smith's suggestion that we should regard the right to take property by devise or descent as a "natural" or "constitutional" one. II. We believe the term "tangible personal property" does not encompass a bank savings account for the following reasons: (1) the plain language of section 633.276 indicates that the legislature did not intend "tangible personal property" to include a bank account; (2) our prior cases have employed the term "tangible personal property" to designate personal and household items and the ordinary meanings of "tangible" and "intangible" support our interpretation of those terms; and (3) confining the applicability of section 633.276 to personal and household items promotes the legislature's desire to protect the integrity of testamentary transfers of property. III. The district court correctly sustained the executor's motion for partial summary judgment. We affirm.

*Reproduced as submitted by the Court

No. 96-815. STATE v. SAYRE.

Appeal from the Iowa District Court for Washington County, James P. Rielly, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Per curiam. (5 pages $2.00)

In a series of trial informations the defendant was charged with numerous offenses, including a charge of eluding a law enforcement vehicle. The defendant and the State filed a plea agreement to resolve all of the pending charges. The plea agreement included that the defendant would agree to an uncontested, non-jury trial on the minutes on the eluding charge. Following a hearing on all the charges, the court filed an order and a judgment entry which contained conflicting characterizations as to whether the court found him guilty of eluding or defendant had pleaded guilty to that charge. The defendant has appealed, arguing his stipulation was tantamount to a guilty plea and the trial court violated his due process right by not ensuring the plea was intelligently and voluntarily given. **OPINION HOLDS:** Although we acknowledge that our trial courts are heavily burdened with an ever increasing case load and we applaud their efforts to streamline procedures, an appellate court must be able to clearly ascertain from the record whether a defendant actually pled guilty or if he merely stipulated to a bench trial on the minutes. If a defendant intends to plead guilty, a trial court must adhere to Iowa Rule of Criminal Procedure 8(2)(b). If a defendant is stipulating to a bench trial on the minutes, then a trial court, in accordance with rule 16, must: (1) verify the defendant's jury trial waiver; (2) confirm the extent of the stipulated factual record; and (3) find the facts specially and on the record, separately state its conclusion of law, and render an appropriate verdict. Absent compliance with either of these rules and given the conflicting characterizations in the record, we are unable to conclusively determine whether the defendant's adjudication of guilt resulted from a guilty plea or a bench trial on the minutes. We therefore reverse the eluding conviction and remand for further proceedings.

No. 96-824. STATE v. OTTO.

Appeal from the Iowa District Court for Boone County, David R. Danilson, District Associate Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Per curiam. (4 pages $1.60)

Lou Ann Otto appeals the judgment and sentence entered upon her conviction of operating a motor vehicle while intoxicated. She argues the district court erred in denying her motion to suppress evidence obtained from an allegedly unlawful stop of her vehicle. **OPINION HOLDS:** Although an observation of a vehicle weaving within its lane will not always constitute reasonable suspicion, we hold that under the circumstances of this case, the fact the state trooper observed Otto's speed fluctuate and her vehicle veer and jerk in its own lane provided reasonable suspicion justifying the stop. We conclude the district court correctly denied Otto's motion to suppress.

No. 96-220. DRENNAN v. AULT.
Appeal from the Iowa District Court for Calhoun County, Ronald H. Schechtman, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Per curiam. (7 pages $2.80)

Charles Drennan was convicted of four counts of operating a motor vehicle while intoxicated, third offense. The Iowa Department of Corrections assigned him to the Larry Nelson Center, a community-based correctional program. While there he violated a number of rules and escaped. Upon his capture he was taken to the Iowa Medical and Classification Center (IMCC) in Oakdale and subsequently transferred to the Iowa Men's Reformatory in Anamosa and the Mount Pleasant Correctional Facility. While at the IMCC, Drennan had a disciplinary hearing where he received notice of the hearing and was afforded an opportunity to present evidence. Drennan was not returned to the Nelson Center because of his escape and other rule violations. Drennan filed a postconviction relief application claiming he should have been reclassified prior to the transfer to the IMCC and a hearing was required for such reclassification. Drennan also argued that Iowa Code section 321J.2 (1991) created a liberty interest because it required that the department send him to a community-based treatment facility. The district court denied Drennan's application. Drennan has appealed. **OPINION HOLDS:** We hold that Drennan had no due process liberty interest in remaining at the Nelson Center. Despite the apparently mandatory nature of the language of sections 321J.2(2)(c) and 904.513(1)(b) and (d), a transfer to a higher degree of confinement or a reclassification to a more supervised form of prison environment does not appear to be an atypical and significant hardship on an inmate in relation to the ordinary incidents of prison life. We affirm the denial of his postconviction relief application.

No. 96-1729. STATE v. LIES.
Appeal from the Iowa District Court for Black Hawk County, William G. Klotzbach, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Per curiam. (5 pages $2.00)

The issue presented in this case is whether, for the purposes of Iowa Rule of Criminal Procedure 27(2)(a), the speedy indictment rule, conspiracy to commit burglary and burglary are the same offense. Defendant was arrested and charged with second-degree burglary. Fifty-five days after the arrest, the State filed a trial information charging defendant with conspiracy to commit burglary. The district court implicitly found these offenses were the same in dismissing the trial information based upon untimeliness. The State appeals. **OPINION HOLDS:** We conclude conspiracy to commit burglary is neither the same offense as the burglary for which defendant was arrested nor a lesser-included offense; therefore, the trial information charging defendant with conspiracy to commit burglary was not untimely filed pursuant to rule 27(2)(a). The district court's ruling dismissing the trial information is reversed and the case is remanded.

No. 96-802. STATE v. LIRA-ZARAGOZA.

Appeal from the Iowa District Court for Woodbury County, Phillip S. Dandos, Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Per curiam. Dissent by Snell, J. (6 pages $2.40)

Refugio Lira-Zaragoza, Jr. and two other men were arrested in a Sioux City motel room pursuant to a search warrant. He was charged with possession of methamphetamine with intent to deliver, failure to affix a drug tax stamp, and possession of cocaine with intent to deliver. At the time of his arrest, Lira-Zaragoza provided the police with a false name and an incorrect birth date which indicated he was an adult when in fact he was only seventeen years of age. After he had been booked, Lira-Zaragoza and the other two men were escorted to a holding area. As they passed by the booking window, Lira-Zaragoza stopped and told Deputy Wieck that the "stuff" was all his and the other two were not involved. The court denied Lira-Zaragoza's motions to suppress in which he claimed a juvenile's statements were per se inadmissible where the juvenile had not waived his right to counsel. Subsequent to the court's rulings, Deputy Wieck was deposed. During the deposition it was disclosed that after Lira-Zaragoza had made the statement that the "stuff" was his, the deputy had immediately asked who had made the statement. In response, Lira-Zaragoza turned toward the deputy, pointed at himself, and claimed he had made it. Deputy Wieck testified similarly at trial. A jury found Lira-Zaragoza guilty and he has appealed. **OPINION HOLDS:** I. We conclude the application of the per se inadmissibility rule is limited to statements a juvenile makes in response to custodial interrogation. A juvenile's spontaneous statement made while in custody but not in response to any direct interrogation is admissible and not within the *Miranda* prohibitions. Trial counsel was therefore not ineffective in failing to further seek suppression of Lira-Zaragoza's first statement. II. We need not determine whether Lira-Zaragoza's second statement was the result of a custodial interrogation and therefore inadmissible because we conclude his counsel's failure to move to suppress the statement was not prejudicial. Lira-Zaragoza's convictions are affirmed. **DISSENT ASSERTS:** I believe the majority errs in concluding that voluntary statements of a juvenile in custody are treated with the same legal analysis as an adult. We have held that a statement obtained from a juvenile without a valid waiver of counsel is per se inadmissible. This holding should be applied to voluntary statements when the juvenile is in custody as well as responses to interrogations. I would reverse and remand for a new trial.

No. 95-1837. KULISH v. ELLSWORTH.

Appeal from the Iowa District Court for Chickasaw County, James L. Beeghly, Robert E. Mahan, John J. Bauercamper, and Forest E. Eastman, Judges. **AFFIRMED ON APPEAL AND CROSS-APPEAL.** Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Neuman, J. (14 pages $5.60)

David LeRoy Kulish died of a heart attack while receiving emergency medical attention following a motor vehicle accident. Kulish's spouse, as administrator of his estate and next friend of their two minor children (hereafter collectively referred to as "plaintiffs"), filed suit for medical malpractice, including claims against the county, county hospital, county hospital ambulance service, No. 95-1837. KULISH v. ELLSWORTH. (continued)

county employees who provided emergency care and other parties not involved in this appeal. The district court, relying on the governmental immunity provided by Iowa Code sections 670.4(11) and 670.12 (1995), granted summary judgment to these defendants. The plaintiffs appeal. Howard County cross-appeals from a prior summary judgment ruling. **OPINION HOLDS:** I. The district court did not abuse its discretion in denying the plaintiffs' motion for continuance to file a resistance to the summary judgment motion and supporting affidavits. Although the district court set a hearing eighteen days after the motion was filed, rather than the twenty days indicated by Iowa Rule of Civil Procedure 237(c), plaintiffs did not establish that the two-day variance was unreasonable given the upcoming trial date. Additionally, the plaintiffs failed to prove the court abused its discretion under rule 237(f) by not allowing additional time to file affidavits. II. The plaintiffs' equal protection challenge to the governmental immunity provision of section 670.4(11) for emergency responses has no merit because the statutory exemption reasonably relates to a legitimate government interest to provide such care. III. Because we have considered county hospitals part of local government in determining tort liability, they should also benefit from the immunities listed in section 670.4. IV. Contrary to the plaintiffs' claims, the defendants' actions and treatment following the car collision clearly involved an emergency response under section 670.4(11). V. Summary judgment for the individual defendants was proper because there is no evidence that their action constituted reckless misconduct to support a punitive damage award under section 670.12. VI. Because these defendants are immune from suit for any claims of negligence, plaintiffs' claims under a res ipsa theory are barred. VII. The district court's judgment in favor of the other defendants necessarily justified dismissal of plaintiffs' claims against defendant Howard County, either on governmental immunity or vicarious liability grounds. Howard County nevertheless claims on cross-appeal that the district court's earlier refusal to dismiss it from the suit because it could not be vicariously liable was erroneous. We decline to disturb this prior ruling because Howard County has prevailed in this litigation. We remand the case to the district court for further proceedings, if any, remaining against the defendants not involved in this appeal.

No. 96-321. ROBBINS v. IOWA DEP'T OF INSPECTIONS & APPEALS.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Neuman, J. (9 pages $3.60)

Plaintiff Charles Robbins suffers from multiple sclerosis, blindness, and a personality disorder featuring explosive and aggressive outbursts. For seventeen years he resided at Heritage Acres, an intermediate care facility. The record reveals that during Robbins' last three months he became physically aggressive and verbally abusive toward several other residents. After Robbins was voluntarily placed in a local hospital psychiatric ward for evaluation, Heritage Acres ultimately notified Robbins that he would be discharged from the facility. The department of inspections and appeals on administrative review of Robbins' appeal upheld the discharge. The department found that Robbins had engaged

No. 96-321. ROBBINS v. IOWA DEP'T OF INSPECTIONS & APPEALS. (continued)

in hostile actions against other residents and staff members. The department concluded these actions justified Robbins' discharge based on the health, safety, and emotional welfare of the other residents. The department also determined that Heritage Acres properly notified Robbins of his involuntary discharge from the facility, finding him to be the "responsible party" for notification, as contemplated in Iowa Administrative Code rule 481—58.40(1). On judicial review, the district court affirmed. Robbins appealed. **OPINION HOLDS:** I. Complimenting the statutory mandates of Iowa Code section 135C.23(2) (1995) prohibiting a health care facility's knowing retention of a resident dangerous or unduly disturbing to other residents, rule 481—58.40(1) prohibits involuntary discharge or transfer from a facility except for "the resident's welfare or that of other residents." Because substantial evidence supports the agency's findings that Robbins engaged in abusive behavior, he cannot escape the department's legal conclusion that his aggressive acts were "unduly disturbing to other residents" and incompatible with the safety of other residents. Clearly Robbins' discharge was warranted under this record. II. Contrary to Robbins' claims, he was a "responsible party" for receiving the notice of discharge under the administrative regulation. The notice provisions did not require additional notification. Although Robbins' counsel hints that Robbins was perhaps incompetent to receive notice of his discharge, the record furnishes no support for such a claim. We thus affirm the district court judgment.

No. 96-84. FULLER v. LOCAL UNION NO. 106.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Harris, J. (9 pages $3.60)

Plaintiff Steven Fuller and the defendants, Robert Schafer, Jim Slebiska, and Charles Hauck, are members of the defendant Local Union No. 106 of the United Brotherhood of Carpenters and Joiners of America. In the spring of 1994 Fuller was a candidate for the position of business agent of the union. Schafer held that office at the time and was a candidate for reelection. During a social hour following a union business meeting in March 1994, Schafer and Hauck observed Fuller drinking beer. Hauck later telephoned Schafer and said that Fuller was weaving while driving on the highway. Schafer then reported to the police that Fuller was driving while intoxicated. The police stopped Fuller but released him, deciding he was not intoxicated. Fuller filed formal charges with the union against Schafer, claiming willful slander and causing dissention in the union. The union's executive board dismissed the charges. Fuller also claimed the union failed to assign him work after he brought the charges. Fuller sued Schafer and the union, alleging malicious prosecution, abuse of process, and intentional infliction of emotional distress claims for the alleged false police report and breach of contract for the union's alleged failure to make proper work referrals. Fuller also sued Hauck, alleging he conspired with Schafer in making the false police report. The actions were subsequently consolidated and then dismissed by summary judgments. Fuller appeals. **OPINION HOLDS:** I. The mere report to police of possible criminal activity does not constitute legal process required for

No. 96-84. FULLER v. LOCAL UNION NO. 106. (continued)

a viable abuse-of-process claim. The trial court was correct in so holding. II. Fuller's claim for intentional infliction of emotional distress fails because the conduct was not outrageous and was correctly dismissed. III. The district court did not abuse its discretion when it denied Fuller's postjudgment motion to allow him to amend his pleadings to state another claim. IV. The district court properly concluded Fuller was required to exhaust viable intra-union remedies as required by its constitution prior to bringing his breach-of-contract action against the union, and any alleged bias at the local union level could be addressed by those internal procedures.

No. 95-578. STATE v. SILLICK.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Lee County, Van D. Zimmer, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Per curiam. (5 pages $2.00)

Defendant Brian Sillick admits he shot and killed his girlfriend, Tami Wilson. Disputed issues at trial related to his defensive claims of intoxication and diminished responsibility. On appeal from his first-degree murder conviction, Sillick challenges the sufficiency of the evidence to support his conviction and an evidentiary ruling. He also raises two ineffective-assistance-of-counsel claims. **OPINION HOLDS:** I. We conclude the evidence was sufficient to support Sillick's conviction. II. We agree that any marginal relevance the impeachment evidence did possess was outweighed by its possible prejudice to the State. The district court did not abuse its discretion in excluding the evidence. This finding renders moot an ineffectiveness claim derived from the same contention. III. The remaining claim of ineffective assistance of counsel is reserved for postconviction review.

No. 96-923. HUMPHRIES v. TRUSTEES OF THE METHODIST EPISCOPAL CHURCH.

Appeal from the Iowa District Court for Howard County, Jon Fister, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Harris, J. (7 pages $2.80)

Summary judgments were entered for the church and its trustees against plaintiff, Humphries, in this slip-and-fall case. Humphries appeals. **OPINION HOLDS:** I. The question is whether a one-foot concrete apron where Humphries fell qualifies as a "sidewalk" for which the snow and ice removal is the duty of the abutting property owner, the church, under Iowa Code section 364.12(2)(b) (1995). We think not, based on our perception of legislative intent. The foot-wide apron was separated from the regular crosswalk by several feet of grass parking. It was intended and used, not as an auxiliary crosswalk, but as a mere widening of the curb. It was not placed or used as a path for pedestrians passing from one point to another along the street. II. Humphries' second allegation that

No. 96-923. HUMPHRIES v. TRUSTEES OF THE METHODIST EPISCOPAL CHURCH. (continued)

the church had a common-law duty to direct her to a safe parking place has no basis in fact. III. The suit against the city was correctly dismissed because of the immunity provided by Iowa Code section 668.10(2); that is, the city complied with its policy of clearing the street adjacent to the church.

No. 96-107. BOHAM v. CITY OF SIOUX CITY.

Appeal from the Iowa District Court for Woodbury County, Dewie J. Gaul, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (13 pages $5.20)

Heidi Thompson, a second-grade student, was struck by a pickup truck after she was allowed to enter a cross-walk by Barbara Marmo, a school crossing guard. After Marmo pushed the button controlling the pedestrian signal and the "WALK" light came on, she told Thompson and another child they could cross a busy intersection near the school. Thompson began running across the street. Marmo did not see a pickup, driven by Ralph Conyers, approaching the intersection. Conyers noticed the stoplight at the intersection was red and braked, but his vehicle did not respond. Marmo finally noticed Conyers' pickup when it was in the intersection and yelled Thompson's name to warn her. Thompson stopped, turned around to face Marmo, and was struck by the pickup. She was immediately rendered unconscious and remained so until she was pronounced dead a half-hour later. Thompson's estate and her parents (plaintiffs) sued the school district, Marmo and the City of Sioux City for Thompson's wrongful death. The jury returned a verdict finding the school district and Marmo (defendants), and Conyers and Lowery (as third-part defendants), proximately caused the accident. The damages awarded included amounts for mental anguish and loss of function of mind and body before death. The court denied defendants' motion for judgment notwithstanding the verdict. On appeal defendants argue there was insufficient evidence to support a finding (1) of negligence because Marmo was entitled to assume Conyers would obey the law and (2) that the specific acts of negligence claimed by the plaintiffs were proximate causes of the accident. Defendants also contend the court erred in submitting a claim for predeath damages. **OPINION HOLDS:** I. We think the evidence supported a finding Marmo, as a crossing guard, did not have the absolute right to assume Conyers would obey the law. The jury could have found Marmo had a higher standard of care than the typical motorist or pedestrian in determining whether an approaching motorist will obey the traffic laws. II. We conclude there was substantial evidence to support the trial court's submission of the following specifications of negligence: (1) instruction of school children; (2) inadequate crossing time; (3) inadequate training and clothing; (4) improper lookout; and (5) calling Thompson's name. III. We do not reach the merits of whether the district court erred in submitting the estate's claim for predeath damages. The defendants did not adequately identify the specific portion of the instruction that was not supported by the evidence or the specific deficiency in the evidentiary support for that instruction. We affirm.

No. 96-503. POLLMANN v. BELLE PLAINE.

Appeal from the Iowa District Court for Benton County, David M. Remley, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (12 pages $4.80)

Pollmann filed this lawsuit when his employer, Belle Plaine Livestock Auction, Inc., terminated Pollmann's employment after he had completed one year of what he believed to be a three-year contract. A jury found the defendant had breached its employment agreement with Pollmann and had negligently misrepresented to Pollmann that he would be given three years to make the defendant's auction business profitable. Defendant appeals. **OPINION HOLDS:** I. The part-performance exception does not extract Pollmann's alleged employment contract from the statute of frauds. The trial court should not have admitted parol evidence of this contract. Without the oral testimony to prove a three-year employment agreement, there was insufficient evidence to submit the breach-of-contract claim to the jury. We need not consider other errors claimed by the defendant in connection with this theory of liability. II. Considering the theory of negligent misrepresentation, however, we hold the evidence created a jury issue on whether Pollmann justifiably relied on a three-year period of employment. Defendant has not preserved error on the argument that negligent misrepresentation does not apply to promises of long-term employment to an at-will employee, and we will not remand on this issue. Defendant also seeks a remand for a determination of the damages recoverable under this tort theory. Based on law-of-the-case principles, the damages Pollmann could recover under his negligent misrepresentation claim are the same as the damages awarded for breach of contract. Accordingly, there is no need to remand this case for a trial on the negligent misrepresentation damages. We affirm the district court judgment.

No. 96-523. SHRIVER v. CITY OF OKOBOJI.

Appeal from the Iowa District Court for Dickinson County, Charles H. Barlow, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Carter, Lavorato, Neuman, and Ternus, JJ. Opinion by Ternus, J. (14 pages $5.60)

Nixon and Nancy Lauridsen want to build a garage, but the applicable 25-foot setback requirement has prevented them from doing so. The Lauridsens' neighbors, appellants Jay and Margie Shriver, fear a garage on the Lauridsen property would interfere with the Shrivers' view of West Okoboji Lake. In previous litigation, the Lauridsens unsuccessfully sought a determination that their lot was not subject to the 25-foot setback requirement. *See Lauridsen v. City of Okoboji*, 554 N.W.2d 541 (Iowa 1996). The appellee, City of Okoboji, then amended the zoning ordinance to render the 25-foot setback line inapplicable to lots such as the Lauridsens' property. Because the Lauridsens may now construct a garage unrestricted by the former setback requirement, the Shrivers challenged the City's action in district court. The district court granted the City's motion for summary judgment. Shrivers appeal, claiming there are genuine issues of material fact concerning (1) whether the council illegally assumed the duties of the zoning administrator and board of adjustment, and (2) whether the council enacted the amendment to benefit a private citizen rather than for the health, safety, morals

No. 96-523. SHRIVER v. CITY OF OKOBOJI. (continued)

or general welfare of the community. The Shrivers finally claim that the district court erred in determining they had no protectible property interest that would support a claim for damages. **OPINION HOLDS:** The district court properly granted summary judgment to the City: (1) the city council did not assume the duties of the zoning administrator or the board of adjustment by amending the definition of "corner lot"; (2) the regulation of setback requirements is a valid exercise of the city's police power to act for the general welfare of the public, and so the ordinance is facially valid; (3) the reasonableness of the city's amended definition of "corner lot" is fairly debatable; (4) the ordinance did not constitute a regulatory taking of the Shrivers' property; and (5) the Shrivers have no protectible property interest in their view across the Lauridsens' land. Because the Shrivers' remaining claims were not considered by the district court, we cannot address them on appeal. Therefore, we affirm the district court judgment.

No. 96-909. HARTFORD-CARLISLE SAVINGS BANK v. SHIVERS.

Certified questions of law from the United States District Court for the Southern District of Iowa, Charles Wolle, Judge. **CERTIFIED QUESTIONS ANSWERED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (13 pages $4.80)

Larry Shivers filed bankruptcy, and the Hartford-Carlisle Savings Bank sold his livestock, machinery, and equipment based upon a security agreement. After the bank filed a complaint objecting to Shivers' discharge in bankruptcy, Shivers asserted the bank failed to dispose of the property in a "commercially reasonable manner" and to give notice of the sale, thereby precluding recovery of any deficiency judgment. The federal district court certified the following questions of law regarding the absolute bar rule against deficiency judgments for failure to comply with the notice provisions of Iowa Code section 554.9504(3) (1993): (1) Is the absolute bar rule still accepted in Iowa?; (2) Has the rule been abrogated by *Barnhouse v. Hawkeye State Bank*, 406 N.W.2d 181 (Iowa 1987)?; (3) If the rule is still viable, is it applied on a case-by-case basis?; (4) If it is still viable, must all the *Barnhouse* factors be applied before determining if the rule is applicable?; and (5) If the rule has been abrogated, does Iowa adopt the rebuttable presumption rule? The sixth question involves an exemption question in a bankruptcy proceeding. **OPINION HOLDS:** I. The absolute bar rule—a secured creditor's failure to give proper notice or sell in a commercially reasonable manner under section 554.9504(3) is an absolute bar to any right to recover a deficiency judgment—was not abrogated by *Barnhouse*. *Barnhouse* is an exception to the rule for a de minimis violation of section 554.9504(3). Accordingly, we answer "yes" to questions one and three, and "no" to question two. These answers render moot question five. Although we believe the absolute bar rule is presently the law in Iowa, perhaps the rule should be revisited in the future. II. Because only the last two factors listed in *Barnhouse*, the amount of the collateral sold must be a bare fraction of the total collateral and the underlying purposes of section 554.9504(3) must not be frustrated, are essential factors in determining whether the absolute bar rule is applicable, we answer "no" to certified question four. III. Both parties agreed that certified question six does

No. 96-909. HARTFORD-CARLISLE SAVINGS BANK v. SHIVERS. (continued)

not involve any issue that needs to be addressed in this appeal. We decline to answer question six because any answer on our part would be an advisory opinion which this court has neither a duty nor the authority to give.

No. 96-1649. BACON v. BACON.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. AFFIRMED. Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (10 pages $4.00)

Casey Bacon is the daughter of Andrea and Darryl Bacon. At the time of the events relevant to this appeal her parents were divorced and Casey was fifteen years old and living with Darryl. Darryl disapproved of Casey's boyfriend, Rob Perry and had "grounded" Casey to stop her from seeing him. On May 3, 1996, Casey accepted a ride home from school from Perry. Following a heated argument with Perry outside, Darryl entered the house and confronted Casey. Darryl testified that Casey raised her arms to strike him. He claims to have then grabbed her arms and held her against the wall. In contrast, Casey testified that Darryl threw her against the wall, held her arms and pressed his forearm across her neck, pressing her into the wall, and choking her. Andrea Bacon filed a petition for relief from domestic abuse as a result of this incident. The district court found that Darryl had engaged in domestic abuse against Casey. On appeal, Darryl contends the evidence was insufficient to sustain the finding and his right as a parent to use corporal punishment to discipline Casey precludes his conduct from rising to the level of an assault for domestic abuse purposes. **OPINION HOLDS:** I. We conclude there was substantial record evidence to support the district court's finding of an assault constituting domestic abuse. II. Because we are bound by the district court's findings, we must accept Casey's version of the incident. Viewed in this light Darryl's action crossed the line of moderation and reasonableness of parental correction into the area of assaultive behavior. III. We grant Casey's request for attorney fees in the amount of $100. We affirm.

No. 96-51. STATE v. MITCHELL.

Appeal from the Iowa District Court for Dubuque County, Alan L. Pearson, Judge. AFFIRMED. Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Lavorato, J. (22 pages $8.80)

A jury convicted Russell Mitchell of third-degree sexual abuse after allegedly performing a sex act with R.C.S. He appeals, claiming the district court: (1) abused its discretion by prohibiting him from eliciting testimony about R.C.S.'s sexually transmitted diseases (STDs); (2) violated his Sixth Amendment rights by prohibiting him from eliciting such testimony; (3) erred in admitting hearsay evidence as to R.C.S.'s age; (4) erred in interpreting the statute as to the age requirement; and (5) erred in refusing to give his proposed credibility instructions. He also contends there was insufficient evidence to support his conviction. **OPINION HOLDS:** I. Before trial, Mitchell filed a motion and

No. 96-51. STATE v. MITCHELL. (continued)

offer of proof regarding STDs, including that R.C.S. had STDs that he did not and vice versa. We conclude the district court was well within its discretion in disallowing the STD evidence because it was irrelevant and overly prejudicial. II. For the same reasons, the court did not err on constitutional grounds in excluding the STD evidence. III. Both R.C.S. and her adoptive mother testified to R.C.S.'s birth date. This testimony was admissible under Iowa Rule of Evidence 803(19). IV. Mitchell argues the age requirement of the offense—victim is "fourteen or fifteen years of age"—was not met because R.C.S. was fifteen years, ten months, and five days old on the alleged offense date. We conclude "fifteen years of age" includes all the months and days over fifteen until the person reaches his or her sixteenth birthday. V. The court did not err in refusing to give Mitchell's proposed credibility instructions and in giving the uniform jury instruction instead. VI. There was sufficient evidence to prove Mitchell engaged in a sex act with R.C.S. and was not cohabiting with her as husband and wife. We affirm.

Nos. 96-557/96-1218. **BOHAN/BUECHELE v. PRINTER'S PLUS.**

Appeals from the Iowa District Court for Dubuque County, Alan L. Pearson, William G. Klotzbach, and Robert J. Curnan, Judges. **REVERSED AND REMANDED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Carter, J. (7 pages $ 2.80)

Three groups of investors brought claims in two separate actions against a securities broker named Michael P. Hogan III, alleging that he had secured funds from them for investment and converted these funds to his own use. They alleged that Hogan was able to deceive them by delivering to them fictitious certificates of deposit purported to have been issued by the LaSalle National Bank of Chicago. These investors also brought a claim against Printer's Plus, Inc., asserting that Printer's Plus is liable for negligently printing certificates of deposit evidencing the debt of the LaSalle National Bank of Chicago without ascertaining the authority of a local securities broker to arrange for this printing contract on behalf of a large Chicago bank. The district court dismissed these claims against Printer's Plus for failure to state a claim. The investors appeal these interlocutory rulings, and we consider them in a single opinion. **OPINION HOLDS:** The investors' claims are premised on the allegation that Printer's Plus should have realized a risk of harm existed to others from its printing of certificates of deposit evidencing indebtedness of a large Chicago bank at the behest of an individual bearing no ostensible relationship to that bank. When such claims do not involve the failure of an actor to protect another person or to control the conduct of a third party, the elements of a negligence claim, as outlined in section 281 of the Restatement (Second) of Torts, do not include a discrete determination of legal duty. We are unable to conclude that there could be no set of facts proved that would support such a claim of actionable negligence on the part of Printer's Plus based on this theory. The district court rulings must be reversed.

No. 95-2201. IN RE MARRIAGE OF SEE.

Appeal from the Iowa District Court for Monroe County, James D. Jenkins, Judge. AFFIRMED AS MODIFIED. Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Carter, J. (4 pages $ 1.60)

Cynthia appeals, contending that the court should have included a provision in the decree requiring Joseph to maintain health insurance coverage for the parties' four children. She also seeks a provision in the decree requiring Joseph to pay the initial health insurance deductible and one-half of all other health care expenses not covered by insurance. **OPINION HOLDS:** A health benefit plan was available to Joseph and was actually maintained by him. This situation falls within the scope of Iowa Code section 598.21(4)(a) (1995), which imposes a duty on the trial court to order that child medical support be provided if obtainable for a reasonable cost. We modify the decree to require that: (1) Joseph shall provide the health benefit plan available to his children through his employer; and (2) each party pay one-half of the initial deductible and one-half of all health care costs not covered by insurance.

No. 96-545. DANAMERE FARMS, INC. v. IOWA DEP'T OF TRANSP.

Appeal from the Iowa District Court for Warren County, Peter A. Keller, Judge. REVERSED AND REMANDED. Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Carter, J. (6 pages $ 2.40)

Danamere Farms, Inc. (Danamere) is the owner of property in Warren County located along a primary highway. Iowa Department of Transportation (IDOT), commenced condemnation proceedings for the taking of 5.75 acres of Danamere's property, which, prior to the taking, contained 233 acres. The county compensation commission awarded $48,000 as Danamere's compensation. Danamere appealed that valuation to the district court. During the trial, Danamere was permitted to offer evidence, over IDOT's objection, concerning a March 1991 offer for approximately two acres of its 233-acre tract at $31,580 per acre to be used for an elderly housing project. Although Danamere agreed to accept this price, the transaction was never consummated. A jury awarded $188,000 as just compensation for the taking. IDOT appeals. **OPINION HOLDS:** I. As general rule, unaccepted offers for the sale of real property should not be received as evidence of the value of real estate. We believe a similar rule should apply in circumstances like this case in which the transaction assumes that a certain use of the property will be permitted and that is not the case. We conclude that the district court erred in admitting evidence of the aborted transaction. II. Because we recognize that the ordinary measure of compensation in eminent domain cases involving a partial taking is the difference between the fair market value of the condemnee's property immediately before the taking and the value of the property that remains following the taking, Danamere's appraiser's valuation testimony based solely on the value of the property taken should not have been received. III. Any constitutional prohibition on the consideration of increased value of the remaining property caused by the improvement on taken property does not preclude IDOT from showing that the property is still suitable for development for the same distance back from the roadway following the taking. We conclude that the district court judgment must be reversed. The case is remanded for retrial of all issues consistent with this opinion.

No. 96-1479. STATE v. MORIARTY.

Appeal from the Iowa District Court for Clay County, Charles H. Barlow, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Carter, J. (5 pages $2.00)

A police officer stopped a motor vehicle being operated by Ronald Moriarty after noticing that the windshield was badly cracked. He also noticed an alligator clip hanging from the rearview mirror, which he commonly recognized as a device utilized for smoking marijuana. Moriarty sat in the patrol car while the officer issued the citation for the cracked windshield. The officer smelled the odor of burnt marijuana that grew stronger over time. The officer informed Moriarty that he smelled marijuana, searched him, and recovered a marijuana pipe and other drug paraphernalia. Moriarty was arrested for possession of a controlled substance. Thereafter, the officers searched Moriarty's car and discovered methamphetamine, a scale, and a radio scanner. Moriarty was also arrested for possession of a controlled substance with intent to deliver. No drug tax stamps were attached to the seized methamphetamine. Moriarty's motion to suppress all evidence because the stop and search were illegal was denied. Following trial, Moriarty was found guilty of failing to affix a drug tax stamp. Moriarty has appealed. **OPINION HOLDS:** I. We believe the officer's observation of an alligator clip, combined with the plain smell of burnt marijuana, provided the officer with probable cause to search Moriarty's person. We reject Moriarty's assertion that Iowa case law provides that the odor of marijuana alone cannot give rise to probable cause. II. We likewise reject Moriarty's argument that the arresting officer lacked the knowledge and training necessary to recognize the scent of marijuana. The search of Moriarty's person was lawful, and the subsequent search of his vehicle at the scene was a lawful search incident to arrest. The district court judgment is affirmed.

No. 95-1942. STATE v. COUSER.

Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (8 pages $ 3.20)

The defendant contended he and his girlfriend had agreed to kill each other by simultaneously cutting the other's jugular vein. The defendant successfully completed the act and caused his girlfriend's death, but she cut the wrong vein and the defendant survived. At his subsequent murder trial, the defendant sought to avoid criminal culpability based on the alleged existence of a joint suicide pact. He was convicted of the lesser included offense of voluntary manslaughter. On appeal he challenges the sufficiency of the evidence of serious provocation, and to the extent he has not preserved error on this claim, he argues his trial counsel was ineffective in failing to object to the submission of the lesser offense of voluntary manslaughter. He also challenges the trial court's refusal to instruct on a joint suicide pact defense. **OPINION HOLDS:** I. At trial the defendant made no objection to the court's submission of the lesser offense of involuntary manslaughter, and he has not preserved error to challenge this on appeal. We find counsel had tactical reasons not to object to the submission of the lesser offense, and the defendant's claim of ineffective assistance must fail. II. The victim's suicidal intent is no defense to the defendant's actions. Similarly, the

No. 95-1942. STATE v. COUSER. (continued)

defendant's suicidal intent is irrelevant to the issue of his criminal culpability for killing another person. No basis exists for concluding that his suicidal state of mind prevented him from appreciating the nature of his actions in killing his girlfriend or from knowing that those actions were wrong. After consideration of all issues presented, we affirm the district court judgment.

No. 95-1204. CITY OF OTTUMWA v. HILL.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Wapello County, Dan F. Morrison, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED ON BOTH APPEALS AND CASE REMANDED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Larson, J.

(6 pages $ 2.40)

In 1957 the city annexed property on which Twyla and Fred Hill (collectively Hill) and their predecessors have operated a junkyard since the 1940s. In 1988 Hill and the city signed an agreement that granted Hill a variance to allow him to expand his nonconforming use. However, Hill began to violate the city ordinances by expanding the operation of the junkyard beyond the parameters approved in the agreement. The city sent frequent written notices stating that if Hill failed to comply with the ordinances regarding junked vehicles the vehicles would be removed at Hill's expense. When Hill failed to comply, the city obtained an administrative search warrant, seized thirty vehicles, and towed them to a storage facility. The city then filed a "petition for declaratory judgment injunction" to enjoin the operation of Hill's junkyard. The district court ordered Hill to pay the towing and storage costs or lose all rights in the vehicles, pursuant to the city's ordinances. It also enjoined Hill from any future operations of the business that would violate the ordinances or variance agreement. Hill appealed, and the city cross-appealed. The court of appeals reversed the allowance of costs to the city and affirmed the denial of the injunction. We granted further review. **OPINION HOLDS:** I. Hill contends that the court erred in allowing the city to collect these costs in the injunction action because the city's only means of reimbursement is through criminal prosecution. (Hill was charged with misdemeanor violations of these ordinances.) However, the city may demand reimbursement of its towing and storing costs as a part of the abatement process pursuant to a city ordinance. The city's demand for payment of its costs as a condition precedent to either a return of the vehicle or the city's disposal of it is "reasonable" under the provisions of Iowa Code section 364.12(3) (1993). Moreover, the city's use of a civil remedy is not precluded by the fact that the ordinances make a junkyard violation a misdemeanor. II. We agree with the district court that a permanent injunction is not warranted under the circumstances. III. We vacate the court of appeals decision. We affirm the district court's order requiring Hill to pay the costs of removing and storing the vehicles but remand for a determination of any additional costs accrued during the pendency of this action. We affirm the injunction as imposed by the district court.

No. 96-914. HENRY v. SHOBER.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (7 pages $2.80)

Plaintiffs Janice and Donald Henry filed a personal injury action against defendant Joyce Shober four days before the expiration of the statute of limitations. The Henrys did not serve the original notice and petition upon Shober until 169 days after the filing of the petition. Shober filed a motion to dismiss, claiming the Henrys failed to comply with Iowa Rule of Civil Procedure 49. The Henrys claimed they were justified in the delay because settlement negotiations with Shober's insurer were ongoing at the time the petition was filed. The district court dismissed the action and the Henrys appeal. **OPINION HOLDS:** It is undisputed the Henrys never attempted to serve Shober for more than five months after the filing of the petition; that delay was both intentional and presumptively abusive. The Henrys have failed to prove the delay in service was justified. Even if an insurer has actual knowledge that a petition will be filed or was filed, or it was not prejudiced by the delay in service, rule 49 still requires service of an original notice and petition upon the defendant. We conclude settlement negotiations, even if done in good faith, do not constitute adequate justification or good cause for delaying service.

No. 96-363. DICKSON v. HUBBELL REALTY CO.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Andreasen, J. (7 pages $2.80)

This dispute arises out of a specific provision in a commercial lease between Hubbell Realty Company, as lessor, and Arthur D. Dickson, as lessee. The relationship traces back through several leases and assignments which began in 1918, and involves the responsibility of Dickson to remove buildings on the leased property when the lease expires. The current lease agreement was executed in 1978. In conjunction with the execution of the 1978 lease, the parties also executed a cancellation agreement which terminated all provisions of the 1966 lease, including a provision which required that all buildings owned or erected on said premises by the lessee be removed at lessee's expense upon the expiration of the lease. Paragraph twenty of the 1978 lease provided that upon the expiration of the lease the lessor could require the lessee to remove any or all of the buildings or improvements constructed or erected by the lessee, and that "[f]or the purposes of this paragraph . . . the term "Lessee" shall be construed, in its broadest sense, to include the original Lessees, and all persons, firms or corporations claiming by, through or under them." Arthur W. Dickson, as executor of Arthur D. Dickson's estate, filed a petition for a declaratory judgment seeking a declaration that, at the expiration of the 1978 lease, the estate had no obligation to remove buildings or improvements that it had not constructed or erected. Both parties filed motions for summary judgment. The district court ruled that the term "lessee" in the 1978 lease was "intended to hold each lessee in succession responsible for the acts of the prior lessees," and therefore, Hubbell could require Dickson to remove the buildings. Dickson appeals. **OPINION HOLDS:** I. We agree with Dickson that it had the responsibility of removing buildings it owned under the 1966 lease, but

No. 96-363. DICKSON v. HUBBELL REALTY CO. (continued)

its obligations under the 1966 lease were expressly terminated and the lease agreement was extinguished upon execution of the 1978 lease and the cancellation agreement. II. Paragraph twenty of the 1978 lease specifically requires that the term "lessee" be construed in its broadest sense. When broadly construed, Dickson is the lessee who "constructed or erected" the buildings on the leased premises. We, like the district court, find Hubbell has the right to require Dickson to remove the buildings. We therefore affirm.

No. 96-795. U.S. WEST COMMUNICATIONS, INC. v. OVERHOLSER.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge. AFFIRMED. Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Snell, J. (8 pages $3.20)

In October 1987, Frances Overholser sustained an injury to her back while employed by U.S. West Communications. She continued to work at the same position until 1989 when she transferred, due to an unrelated condition, to a less strenuous, but higher paying position. In December 1991, a workers' compensation settlement agreement was approved, providing that Frances sustained a permanent partial disability of five percent to the body as a whole. In July 1993, Frances was laid off by U.S. West as a result of downsizing. The layoff was based upon seniority. Frances repeatedly attempted to obtain another position with U.S. West, but she did not have sufficient qualifications or seniority to be recalled. In October 1993, Frances filed a petition to reopen the settlement agreement, seeking additional benefits because of her layoff. The parties agreed that her medical condition had not changed since the settlement. The deputy determined Frances sustained an additional thirty percent loss of earning capacity since the settlement date due to a substantial change in her economic situation. The industrial commissioner affirmed the award. On judicial review, the district court reversed concluding the 1991 settlement was not contingent on Frances' continued employment with U.S. West, there was no causal nexus between her back injury and the decrease in her earning capacity, and her layoff was due solely to lack of seniority. Frances appeals. OPINION HOLDS: I. Frances contends that a rewriting of the settlement agreement is warranted solely because she has suffered a change in her economic condition subsequent to the 1991 settlement agreement, relying on *Gallardo v. Firestone & Rubber Co.*, 482 N.W.2d 393 (Iowa 1992). There is no evidence that Frances' disability rating was "adjusted downward" because of accommodation by U.S. West. After her initial injury, Frances' conditions of employment were unchanged and she was able to perform her same job and duties despite her five percent disability rating. Unlike *Gallardo*, Frances' physical condition did not deteriorate after the settlement and there is no evidence the disability rating awarded in the settlement was a distortion of her true earning capacity. Additionally, we are not convinced that U.S. West actually accommodated her original injury. II. The district court correctly focused its analysis on the condition of the employee, and properly determined that any decrease in Frances' earning capacity was not caused by her original back injury. Her earning capacity decreased solely because of factors outside of the settlement, including subsequent injuries, lack of seniority, and job seeking skills. The district court correctly reversed the industrial commissioner's decision to reopen the settlement agreement.

No. 96-191. STATE v. RATER.

Appeal from the Iowa District Court for Polk County, Glenn E. Pille and Gene L. Needles, Judges. **REVERSED AND REMANDED.** Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (17 pages $6.80)

In 1987, Maja and Otho Rater's marriage was dissolved. Otho Rater (Rater) was ordered to pay monthly child support for their minor children, which Rater failed to pay after December 1992. In November 1993, the court found Rater in contempt for failing to comply with the child support order. The court entered ten separate findings of contempt for December 1992 through September 1993, and sentenced Rater to serve jail time. In November 1994, a grand jury indicted Rater on fourteen counts of criminal non-support for non-payment from October 1993 to November 1994. Rater's first court-appointed attorney withdrew due to a disagreement with Rater over the need for an application for a psychological evaluation. Rater's second and third attorneys' applications to withdraw were also granted. The court then appointed Michael Blazek. Rater and Blazek disagreed over the psychological evaluation and other issues, and Rater requested new counsel. The court ordered Rater to complete the evaluation before it would consider appointing new counsel. Rater never obtained the evaluation and eventually requested to proceed pro se. After considerable discussion and several continuances of trial, the court's final decision was Rater would proceed pro se and Blazek would act as stand-by counsel. Rater filed several motions, including a double jeopardy challenge, which was denied. Prior to trial, Rater informed the court he was not qualified to represent himself and asked that Blazek conduct his defense, but the court reaffirmed its prior ruling. The jury found Rater guilty of all counts. Rater appeals, arguing his rights under the Sixth Amendment and the Double Jeopardy Clause have been violated. **OPINION HOLDS:** I. We hold the trial court failed to conduct a sufficient inquiry to ensure that Rater's waiver of his right to counsel was intelligent and done knowingly with an awareness of the pitfalls inherent in self-representation, and that Rater was competent to make that decision. Accordingly, the waiver was not valid. Further, we hold that even if proper inquiry had occurred, the court erred in denying Rater's later waiver of his right of self-representation. Rater is entitled to a new trial. II. The Double Jeopardy Clause does not bar Rater's prosecution for criminal non-support although he had already been found in contempt for failure to pay child support. Criminal non-support is not a continuous offense and is not the same offense for double jeopardy purposes. We reverse and remand for a new trial.

No. 95-1753. SLADE v. M.L.E. INVESTMENT CO.

Appeal from the Iowa District Court for Polk County, Richard G. Blane, II, Judge. **AFFIRMED IN PART AND REVERSED IN PART.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by McGiverin, C.J. (8 pages $3.20)

Slade borrowed monies from M.L.E. Investment Company to redeem two parcels of land from foreclosure. She executed a promissory note for the amount borrowed. She further executed a real estate mortgage to one parcel of land (Clark Street) and a warranty deed to the other parcel (Ohio Street). She then

No. 95-1753. SLADE v. M.L.E. INVESTMENT CO. (continued)

repurchased the Ohio Street property by real estate contract. Slade defaulted on the loan, and M.L.E. forfeited the real estate contract for the Ohio Street property. M.L.E. later foreclosed on the Clark Street property, which was later deeded to and sold by E.L.M. Trust. On appeal, Slade challenges the district court's dismissal of her petition that alleged defendants wrongfully obtained a foreclosure on the real estate mortgage and were unjustly enriched. She also claims that the district court improperly imposed sanctions against her. **OPINION HOLDS:** I. Slade failed to assert as a defensive matter during the foreclosure proceedings her claim that the forfeiture of the Ohio Street property extinguished her debt to M.L.E. Thus, that claim is barred. II. We conclude M.L.E. was not unjustly enriched by obtaining title to both properties. III. The district court ordered Slade to furnish a surety bond in any future action against defendants. We conclude that Iowa Rule of Civil Procedure 80(b) does not apply to possible future lawsuits, and the district court erred in applying the rule here. We affirm the dismissal of Slade's petition and reverse the imposition of sanctions. Costs on appeal are taxed three-fourths to Slade and one-fourth to M.L.E.

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