IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XX NUMBER 8
October 8, 1997 Pages 661 to 796

CONTENTS IN THIS ISSUE

Pages 678 to 773 include **ARC 7541A** to **ARC 7593A**

Continued on page 663

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.

KATHLEEN K. BATES, Administrative Code Editor Telephone: (515)281-3355
ROSEMARY DRAKE, Assistant Editor (515)281-7252

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

First quarter	July 1, 1997, to June 30, 1998	$237.00 plus $11.85 sales tax
Second quarter	October 1, 1997, to June 30, 1998	$178.00 plus $8.90 sales tax
Third quarter	January 1, 1998, to June 30, 1998	$118.00 plus $5.90 sales tax
Fourth quarter	April 1, 1998, to June 30, 1998	$ 60.00 plus $3.00 sales tax

Single copies may be purchased for $17.50 plus $0.88 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

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

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

Iowa Administrative Code – $1,086.00 plus $54.30 sales tax
(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Administrative Bulletin. **Additional** or replacement **binders** can be purchased for $10.55 plus $0.53 tax.)

Iowa Administrative Code Supplement – $382.00 plus $19.10 sales tax
(Subscription expires June 30, 1998)

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

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

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
10	**Friday, October 17, 1997**	**November 5, 1997**
11	**Friday, October 31, 1997**	**November 19, 1997**
12	**Friday, November 14, 1997**	**December 3, 1997**

PLEASE NOTE:

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

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

PUBLICATION PROCEDURES

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

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

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

Ami Pro	Microsoft Word	SuperCalc
Ami Pro Macro	Microsoft Word for Windows 1.x, 2.0, 6.0	Symphony Document
dBase	MultiMate	Wang (IWP)
DCA/FFT	Navy DIF	Windows Write
DCA/RFT	Office Writer	Word for Windows 1.x, 2.0, 6.0
DIF	Paradox	WordPerfect 4.2, 5.x, 6.0
Display Write 4	Peach Text	WordStar
Enable 1.x, 2.x, 4.x	Professional Write	WordStar 2000 ver 1.0, 3.0
Excel 3.0, 4.0, 5.0	Rich Text Format	XyWrite III, Plus
Exec MemoMaker	Samna Word	XyWrite IV
Manuscript	SmartWare	

2. If you do not have any of the above, a file in an ASCII format is helpful.

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

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

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

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

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Drinking water revolving fund, ch 44 IAB 9/10/97 **ARC 7508A**	Amana Bldg., Iowa Hall Rooms C-D Kirkwood Community College 6301 Kirkwood Blvd. S.W. Cedar Rapids, Iowa	October 13, 1997 10:30 a.m. to 2 p.m.
	Muse-Norris Conference Room North Iowa Area Community College Mason City, Iowa	October 14, 1997 8:30 a.m. to 11 a.m.
	Fieben Forum Buena Vista College Fourth and Grand Ave. Storm Lake, Iowa	October 15, 1997 9 a.m. to 12 noon
	Denison Community Room 111 N. Main St. Denison, Iowa	October 16, 1997 9:30 a.m. to 1 p.m.
	City Council Chambers 112 S. Main St. Fairfield, Iowa	October 17, 1997 10:30 a.m. to 2 p.m.
Groundwater pollution potential of agricultural drainage wells, 50.2 to 50.4, 50.6, 50.7, 51.3, 52.21 IAB 9/10/97 **ARC 7509A**	Humboldt County Conservation Board Bldg.—Oxbow Park (1½ mi. west of Humboldt on Hwy. 3) Humboldt, Iowa	October 8, 1997 7 p.m.
	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	October 10, 1997 9:30 a.m.
HUMAN SERVICES DEPARTMENT[441]		
Pilot diversion and self-sufficiency grants programs, 7.5(2), 41.25(9), 41.27(7)"ai," ch 47, 75.26 IAB 10/8/97 **ARC 7545A** (See also **ARC 7546A** herein)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	October 31, 1997 10 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	October 29, 1997 9 a.m.
	Conference Room 3—5th Floor Bicentennial Bldg. 428 Western Ave. Davenport, Iowa	October 30, 1997 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	October 30, 1997 1 p.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	October 30, 1997 10 a.m.
	Conference Room 2 120 E. Main Ottumwa, Iowa	October 29, 1997 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	October 29, 1997 1 p.m.
	Conference Room 220 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	October 29, 1997 10 a.m.
LABOR SERVICES DIVISION[347]		
Fees, rescind 347—ch 75; adopt 875—ch 304 IAB 9/24/97 **ARC 7534A**	Labor Services Division Office 1000 E. Grand Ave. Des Moines, Iowa	October 16, 1997 1 p.m. (If requested)
NATURAL RESOURCE COMMISSION[571]		
Boating speed—Cedar River, Charles City, 40.45 IAB 10/8/97 **ARC 7576A**	Conference Room—4th Floor West Wallace State Office Bldg. Des Moines, Iowa	October 28, 1997 10 a.m.
Wild turkey spring hunting, 98.12 IAB 10/8/97 **ARC 7577A**	Wildlife Bureau Office Wallace State Office Bldg. Des Moines, Iowa	November 5, 1997 10 a.m.
RACING AND GAMING COMMISSION[491]		
Occupational and vendor licensing, rescind 13.6(6) IAB 10/8/97 **ARC 7585A**	Suite B 717 E. Court Des Moines, Iowa	October 28, 1997 9 a.m.
REGENTS BOARD[681]		
Traffic and parking at universities, 4.2 to 4.7 IAB 10/8/97 **ARC 7544A**	Room W401 Pappajohn Business Admin. Bldg. University of Iowa Iowa City, Iowa	November 3, 1997 9 a.m.
SOIL CONSERVATION DIVISION[27]		
Financial incentive program for soil erosion control, 10.32(5), 10.41, 10.42, 10.55, 10.58, 10.60, 10.74(5), 10.81(3), 10.82, 10.84 IAB 10/8/97 **ARC 7542A**	Conference Room—2nd Floor South Half Wallace State Office Bldg. Des Moines, Iowa	November 3, 1997 2 p.m.
Water protection practices—water protection fund, 12.50, 12.76, 12.77(1), 12.82 to 12.85 IAB 10/8/97 **ARC 7543A**	Conference Room—2nd Floor South Half Wallace State Office Bldg. Des Moines, Iowa	November 3, 1997 2 p.m.

SOIL CONSERVATION DIVISION[27] (Cont'd)

Minerals program, 60.10, 60.12, 60.20, 60.30, 60.40, 60.41, 60.50(1), 60.60, 60.65, 60.70, 60.75, 60.80, 60.85, 60.90, 60.95 IAB 9/24/97 **ARC 7540A**	Conference Room—2nd Floor South Half Wallace State Office Bldg. Des Moines, Iowa	October 20, 1997 2 p.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Unauthorized Internet use; dial-up access from remote locations, 14.1(2), ch 16 IAB 10/8/97 **ARC 7578A** **(ICN Network)**	STARC Armory Camp Dodge Johnston, Iowa	October 29, 1997 9 a.m.
	Algona Armory ICN Classroom 1511 N. POW Camp Rd. Algona, Iowa	October 29, 1997 9 a.m.
	Boone Flight Facility ICN Classroom 700 Snedden Dr. Boone, Iowa	October 29, 1997 9 a.m.
	Burlington Armory ICN Classroom 2500 Summer St. Burlington, Iowa	October 29, 1997 9 a.m.
	Carroll Armory 1712 LeClark Rd. Carroll, Iowa	October 29, 1997 9 a.m.
	Cedar Rapids Armory Classroom 4 10400 18th St. S.W. Cedar Rapids, Iowa	October 29, 1997 9 a.m.
	Centerville Armory ICN Classroom RR 1, Box 125B (1 mile east of Hwy. 5 on Dewey Rd.) Centerville, Iowa	October 29, 1997 9 a.m.
	Charles City Armory ICN Classroom 2003 Clark St. Charles City, Iowa	October 29, 1997 9 a.m.
	Corning Armory Room 111 RR 1, Box 190 Corning, Iowa	October 29, 1997 9 a.m.
	Council Bluffs Armory ICN Room 2415 Kanesville Rd. Council Bluffs, Iowa	October 29, 1997 9 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751] (ICN Network) (Cont'd)	Davenport Public Library Meeting Room A 321 Main St. Davenport, Iowa	October 29, 1997 9 a.m.
	Dubuque Armory ICN Classroom 195 Radford Rd. Dubuque, Iowa	October 29, 1997 9 a.m.
	Iowa Falls Armory ICN Classroom 217 Georgetown Rd. Iowa Falls, Iowa	October 29, 1997 9 a.m.
	Keokuk Armory ICN Classroom 170 Boulevard Rd. Keokuk, Iowa	October 29, 1997 9 a.m.
	Knoxville Armory 1015 N. Lincoln Knoxville, Iowa	October 29, 1997 9 a.m.
	LeMars Armory ICN Classroom 1050 Lincoln St. S.E. LeMars, Iowa	October 29, 1997 9 a.m.
	Muscatine Armory ICN Classroom 1421 Park Ave. Muscatine, Iowa	October 29, 1997 9 a.m.
	Ottumwa Armory ICN Classroom 2858 N. Court Rd. Ottumwa, Iowa	October 29, 1997 9 a.m.
	Shenandoah Armory ICN Classroom 601 Ferguson Rd. Shenandoah, Iowa	October 29, 1997 9 a.m.
	Sioux Center Community Center ICN Classroom 102 S. Main St. Sioux Center, Iowa	October 29, 1997 9 a.m.
	Spencer Armory ICN Classroom 11 E. 23rd St. Spencer, Iowa	October 29, 1997 9 a.m.
	Storm Lake Armory 1601 Park St. Storm Lake, Iowa	October 29, 1997 9 a.m.
	Waterloo Armory ICN Classroom 3306 Airport Blvd. Waterloo, Iowa	October 29, 1997 9 a.m.

TRANSPORTATION DEPARTMENT[761]

Special registration plates, ch 401 IAB 10/8/97 **ARC 7541A**	Conference Room—Lower Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	October 30, 1997 10 a.m. (If requested)

UTILITIES DIVISION[199]

Hazardous liquid pipelines, ch 13 IAB 9/10/97 **ARC 7485A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	October 30, 1997 10 a.m.
Universal service—low income assistance, 22.4, 22.18, 38.8, 39.1, 39.3, 39.4 IAB 10/8/97 **ARC 7586A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	November 4, 1997 10 a.m.
Management efficiency, 29.3(1), rescind 29.5 IAB 9/10/97 **ARC 7486A**	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	October 8, 1997 10 a.m.
Universal service—eligible carriers, ch 39 IAB 9/24/97 **ARC 7538A** (See also ARC 7539A)	Hearing Room—1st Floor Lucas State Office Bldg. Des Moines, Iowa	November 4, 1997 10 a.m.

CITATION of Administrative Rules

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

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

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

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	Anatomical Gift Public Awareness	State-wide	Hospitals licensed in Iowa	Develop and conduct a hospital-based public awareness project regarding organ and tissue donation or develop or promote an anatomical gift referral protocol.	March 31, 1998	Contract Period June 1, 1998 through December 31, 1998

Application forms may be obtained by contacting:

Ronald D. Eckoff, M.D., M.P.H.
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
515/281-5914
Fax 515/281-4535

Note: Approximately $15,000 is available for individual grants ranging from $1,000-$5,000.

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	Any organization providing data collection services.	Conduct random sample of Iowa adults (4,000 annually) to obtain health-related behavioral risk factor data.	November 8, 1997	Contract Period January 1, 1998 through December 31, 1998 Project Period January 1, 1998 through December 31, 2002

***NOTE - The original notice of availability of funds and request for proposals published in the Iowa Administrative Bulletin on August 13, 1997 has been rescinded. This notice of availability of funds supercedes that original.**

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 Centers for Disease Control and Prevention funds.

NOTICE - AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Bicycle Safety	Statewide	Not-for-Profit Bicycle Clubs and Other Local Coalitions Which Include a Bicycle Club Identifying Specific Need	Bicycle Safety Education for Children 5-14	11/14/97	1/1/98 through 9/30/98

Request application packet from :

Mary Harlan, Bureau of Disability and Injury Prevention
Division of Substance Abuse and Health Promotion
Iowa Department of Public Health
Lucas Building; Des Moines, Iowa 50319-0075
Telephone: (515) 242-6336

NOTICE - AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Bucklebear	Black Hawk and Wapello Counties. These counties were selected based on injury information provided by the DOT, Governor's Traffic Safety Bureau, and Public Health statistics.	Licensed day care centers and preschools in Black Hawk and Wapello Counties.	Child passenger safety education and toddler seat loaner program.	11/14/97	1/1/98 through 6/30/98

Request application packet from :

Mary Harlan, Bureau of Disability and Injury Prevention
Division of Substance Abuse and Health Promotion
Iowa Department of Public Health
Lucas Building; Des Moines, Iowa 50319-0075
Telephone: (515) 242-6336

NOTICE - AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract and Project Period
Public Health	Family Planning	NA	Iowa Department of Public Health - Family Planning Agencies	OB-GYN Nurse Practitioner Training.	December 1, 1997	Contract Period January 1, 1998 through December 31, 1998

Application forms may be obtained by contacting:

Jane Borst
Bureau of Family Services
Division of Family and Community Health
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
515/281-4911
Fax 515/242-6384

ARC 7565A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 261.3, the College Student Aid Commission proposes to amend Chapter 1, "Organization and Operation," Iowa Administrative Code.

The proposed amendment updates the Commission's address.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309, telephone (515)281-3501, on or before October 28, 1997.

This amendment is intended to implement Iowa Code section 261.3.

The following amendment is proposed.

Amend subrule 1.2(1) as follows:

1.2(1) Location. The commission is located in the ~~Jewett Building, Ninth and Grand~~ *Clemens Building, 200 Tenth Street, Fourth Floor,* Des Moines, Iowa 50309-*3609*; telephone (515)281-3501. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

ARC 7563A

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code §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 261.1(5) and 261.3, the College Student Aid Commission proposes to amend Chapter 13, "Iowa Vocational-Technical Tuition Grant Program," Iowa Administrative Code.

The proposed amendments allow eligible students enrolled in vocational or technical (career education) programs at Iowa community colleges to receive prorated Iowa Vocational-Technical Tuition Grants for part-time enrollment.

Interested persons may submit comments orally or in writing to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309, telephone (515)281-3501, on or before October 28, 1997.

These amendments are intended to implement Iowa Code sections 261.1(5) and 261.3.

The following amendments are proposed.

ITEM 1. Amend rule 283—13.1(261), catchwords, as follows:

283—13.1(261) Tuition grant based on financial need to Iowa residents enrolled ~~as full-time students~~ in vocational or technical (career education) programs at public area schools in the state.

ITEM 2. Amend subrule 13.1(2) as follows:

13.1(2) Student eligibility.

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

b. A recipient must be enrolled for at least three semester hours or the trimester or quarter equivalent in a vocational-technical or career option program.

~~b~~ *c.* A recipient may receive moneys under this program for not more than four semesters, eight quarters, or the equivalent of two full years of study.

~~c~~ *d.* A recipient may again be eligible for moneys under 13.1(2)~~"b"~~ "*c*" if the recipient resumes study after at least a two-year absence, except for coursework for which credit was previously received.

ARC 7545A

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 sections 217.6 and 249A.4 and 1997 Iowa Acts, Senate File 516, section 5, subsection 3, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1), and section 37, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code, and to adopt Chapter 47, "Pilot Diversion and Self-Sufficiency Grants Programs," Iowa Administrative Code.

These amendments define and structure the Department of Human Services Pilot Diversion and Self-Sufficiency Grants Programs. The purpose of these pilot programs is to determine the potential benefits and cost savings of providing immediate, short-term assistance to families in lieu of ongoing assistance under the Family Investment Program (FIP) (diversion), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (self-sufficiency grants). Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment.

Objectives of the pilot programs include:

- Linking welfare participants and potential welfare recipients with employment;

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Avoiding FIP dependency or reducing the time of dependence on FIP;
- Developing, demonstrating and evaluating specialized local strategies;
- Determining cost-effectiveness of diversion or self-sufficiency assistance.

Participation in either program shall be based on a voluntary, informed decision by the family. There is no entitlement to participation in either pilot program. The scope of these pilot programs is limited to avoiding or reducing dependency on cash assistance. These pilot programs are not intended to divert families from applying for or receiving other assistance programs provided by the department including child care, food stamps or Medicaid. Families may receive those benefits if otherwise eligible. Further, candidates for the pilot programs shall not be denied FIP or have FIP benefits reduced or canceled on the basis that they do not want to participate in the pilot program.

These pilot programs are based on recommendations made by the Welfare Reform Advisory Group to the Department. The Advisory Group was convened in 1996 to meet a legislative mandate for establishing an interagency task force to provide input to the Department concerning FIP and welfare reform.

Following the recommendations of the Advisory Group, the Seventy-seventh General Assembly authorized and funded a pilot program to divert potential FIP applicants and assist FIP participants in overcoming barriers to employment. Incentives may be provided in the form of payment or services. A subaccount in the amount of $500,000 was allocated within the FIP account for the pilot program. Funding for the pilot program was made possible by the elimination of the Work Transition Period (WTP). WTP exempted earnings from new jobs for the first four months of employment.

Of the $500,000 allocated, the Department has decided to use $100,000 for the Pilot Diversion Program and $400,000 for the Self-Sufficiency Grants Pilot Program. As WTP actually benefited FIP recipients and the pilot programs are funded from former WTP funds, more was allocated to Self-Sufficiency Grants than Diversion. Both are still employment-related and are intended to achieve the same basic goal as WTP, encouraging work over FIP.

These pilot programs give local projects flexibility to better meet family needs. These rules are intended to provide general parameters rather than be prescriptive. This allows county offices the opportunity and flexibility to be more innovative in developing programs designed to more effectively meet local needs and conditions. Flexibility allows for simultaneously trying a broader range of procedures and techniques across pilot sites, as opposed to a single, prescribed methodology, which will better enable the Department to identify and refine best practices that could be incorporated into any continuation or expansion of the programs. County offices will have correspondingly increased responsibility and accountability in administering these programs.

Local pilot projects shall be implemented no earlier than October 1, 1997, and, subject to funding, shall operate until June 30, 1998. Continuation and expansion of the pilot programs shall depend on subsequent legislation. The Department is required to make a report to the legislature by January 15, 1998, on the potential benefits of continuing or expanding the programs. These pilot programs will be limited in scope, affecting a small percentage of the FIP caseload. Results of the pilot programs will be used to determine whether the concept has the potential for a significant positive impact if expanded.

Pilot Diversion Program

The Pilot Diversion Program provides a voluntary alternative to ongoing cash assistance to families from FIP as provided under 441—Chapters 40, 41, and 42. The purpose of the Pilot Diversion Program is to provide immediate, short-term assistance to a family, in lieu of ongoing FIP cash assistance. For example, diversion assistance can be used for a car repair so a family member can get to an existing job, and remain self-sufficient. Assistance under this program may postpone or prevent the need to apply for FIP.

The Pilot Diversion Program shall consist of local pilot projects. Only county department offices were eligible to apply for pilot diversion funding and administer pilot projects; however, the county office may work in conjunction with other local resources. Proposals requesting a total of $219,320 were received from the following counties: Cass, Johnson, Linn, Pottawattamie, Story, and Woodbury. A panel of FIP, Food Stamp, Medicaid, services, data management, child support, workforce development and county general relief representatives reviewed the proposals for completeness and feasibility, and made recommendations to fund those that best met the overall objectives of the pilot. Initial pilot projects shall be implemented in the following counties at these amounts:

- Cass $20,000
- Pottawattamie $40,000
- Woodbury $40,000

Up to three additional pilot projects may be implemented during the program's duration if additional funding becomes available.

Self-Sufficiency Grants Program

Pilot Family Self-Sufficiency Grants Program

The Pilot Family Self-Sufficiency Grants Program is available statewide for payment to families or on behalf of specific families. The family self-sufficiency grants are part of the PROMISE JOBS program. Funding is allocated to each of the 15 PROMISE JOBS service delivery regions, based on a formula that uses the number of FIP cases in the region.

Family self-sufficiency grants shall be authorized for removing an identified barrier to self-sufficiency for a family when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of authorization of payment. The grants are not to duplicate assistance available under regular PROMISE JOBS policies but are to address barriers to self-sufficiency by meeting expenses that are not approvable under regular PROMISE JOBS policies.

Pilot Community Self-Sufficiency Grants Programs

County Department offices and local PROMISE JOBS service delivery regions must apply jointly to receive a community self-sufficiency grant. Either entity can administer the pilot project; however, the Department and PROMISE JOBS are encouraged to work in conjunction with other local resources. Requests for applications were sent to the county and PROMISE JOBS offices on August 13, 1997. The deadline for submitting applications was September 26, 1996. The decision on the final number of project sites to be funded will be announced on October 20, 1997.

Community self-sufficiency grants shall establish pilot projects to identify and remove systemic or community barriers to self-sufficiency, helping multiple PROMISE JOBS participant families to obtain or retain employment. This pi-

HUMAN SERVICES DEPARTMENT[441](cont'd)

lot program gives local projects flexibility to better address systemic or community barriers to self-sufficiency for FIP participants such as, but not limited to, communitywide or community-specific transportation needs, unusual child care needs not addressed by existing child care programs such as sick-bay child care or shift child care, parent or other relative care needs, language barrier programs, meeting special employer needs, prework skills training that is not available through PROMISE JOBS, economic development-related community needs, or community needs for work-based learning projects.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 7546A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written data, views, and arguments thereto received by the Bureau of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before October 29, 1997.

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

Cedar Rapids - October 31, 1997 — 10 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Sixth Floor Conference Room
411 Third St. S. E.
Cedar Rapids, Iowa 52401

Council Bluffs - October 29, 1997 — 9 a.m.
Lower Level
Council Bluffs Regional Office
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport - October 30, 1997 — 10 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor
Conference Room 3
428 Western
Davenport, Iowa 52801

Des Moines - October 30, 1997 — 1 p.m.
Des Moines Regional Office
City View Plaza
Conference Room 104
1200 University
Des Moines, Iowa 50314

Mason City - October 30, 1997 — 10 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa - October 29, 1997 — 10 a.m.
Ottumwa Area Office
Conference Room 2
120 East Main
Ottumwa, Iowa 52501

Sioux City - October 29, 1997 — 1 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska St.
Sioux City, Iowa 51101

Waterloo - October 29, 1997 — 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 220
1407 Independence Avenue
Waterloo, Iowa 50703

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

These amendments are intended to implement 1997 Iowa Acts, Senate File 516, section 12, subsection 2, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1).

ARC 7562A

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 52, "Payment," and Chapter 177, "In-Home Health Related Care," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 1997, as **ARC 7489A**.

The Notice proposed to temporarily reduce reimbursement rates for some State Supplementary Assistance Residential Care Facility (RCF) and In-Home Health-Related Care (IHHRC) providers by 4.6 percent during the months of February 1998 through June 1998, and to increase reimbursement rates for some State Supplementary Assistance RCF and IHHRC providers by 4.26 percent (over rates in effect as of January 1998) beginning July 1998.

The February 1998 through June 1998 decrease in reimbursement rates was initially proposed to offset a projected deficit in the State Fiscal Year 1998 State Supplementary Assistance appropriation. 1997 Iowa Acts, House File 715, section 8, subsection 2, paragraph "b," gives the Department the authority to offset a State Fiscal Year 1998 State Supplementary Assistance appropriation deficit with the Medical Assistance appropriation surplus if the Medical Assistance appropriation is projected to have a surplus for state fiscal year 1998. Rather than decreasing reimbursement rates as proposed in the Notice of Intended Action which would have caused some recipients to become ineligible for State Supplementary Assistance and which would have adversely affected providers, the Department has chosen to manage the projected State Supplementary Assistance deficit by using expected surplus funds in the Medical Assistance appropriation.

The July 1998 increase in reimbursement rates was proposed to comply with the State Supplementary Assistance Pass-Along requirement for calendar year 1998. If reim-

HUMAN SERVICES DEPARTMENT[441](cont'd)

bursement rates are not reduced during February 1998 through June 1998, this July 1998 rate increase is no longer needed to comply with the Calendar Year 1998 Pass-Along requirement.

ARC 7576A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment would establish a five miles per hour speed zone in the Cedar River at Charles City, beginning at the upper dam and extending upstream 300 feet.

Any interested person may make written suggestions or comments on the proposed amendment on or before October 28, 1997. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on October 28, 1997, at 10 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rule.

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

This rule is intended to implement Iowa Code section 462A.26.

The following amendment is proposed.

Rescind rule 571—40.45(462A) and insert in lieu thereof the following new rule:

571—40.45(462A) Zoning of the Cedar River.

40.45(1) Nashua, Chickasaw County. All vessels operated in a designated zone extending east 150 feet from the intersection of Wabash Street and Charles City Road and north 380 feet shall be operated at a no-wake speed. The city of Nashua shall designate and maintain the no-wake zone with marker buoys approved by the natural resource commission.

40.45(2) Charles City, Floyd County. All vessels operated in a designated zone extending 300 feet upstream from the upper dam shall be operated at a speed not greater than five miles per hour. The city of Charles City shall designate and maintain the five miles per hour speed zone with marker buoys approved by the natural resource commission.

ARC 7577A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

These rules govern hunting wild turkey during the spring season and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Any interested person may make written suggestions or comments on this proposed amendment on or before November 5, 1997. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or at the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on November 5, 1997, at 10 a.m. at the Wildlife Bureau office at the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendment is proposed.

Amend 571—98.12(483A) as follows:

571—98.12(483A) License quotas. A limited number of wild turkey hunting licenses will be issued in each zone in each season as follows:

1. Zone 1. Closed.
2. Zone 2. Closed.
3. Zone 3. Closed.
4. Zone 4. ~~200~~ *325*.
5. Zone 5. ~~75~~ *95*.
6. Zone 6. ~~140~~ *200*.
7. Zone 7. ~~35~~ *46*.

ARC 7558A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 5, "Licensure by Reciprocity," Iowa Administrative Code.

The amendment was approved at the September 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendment clarifies the required qualifications of an applicant for reciprocal license when that applicant is a graduate of a foreign college of pharmacy which has not been recognized and approved by the Board. The amended rule also adds the new name of the National Pharmacist Licensure Examination (NAPLEX) as a valid examination for licensure.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on October 31, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

This amendment is intended to implement Iowa Code section 147.94.

The following amendment is proposed.

Amend rule 657—5.4(147) as follows:

657—5.4(147) Eligibility for reciprocity. The applicant must be a licensed pharmacist by examination in some state of the United States with which Iowa has a reciprocal agreement and must be in good standing at the time of the application. Further, all applicants for reciprocity to this state who obtain their original licensure after January 1, 1980, must have passed the National Association of Boards of Pharmacy (NABP) Licensure Examination (NABPLEX), *the North American Pharmacist Licensure Examination (NAPLEX),* or ~~its~~ *an* equivalent *examination* as determined by NABP. Reciprocal licensure will not be granted until after the applicant has shown proof of qualifications and has passed an examination on the Iowa drug laws, and the application has been approved by the ~~secretary~~ *executive secretary/director* of the board. *If the applicant is a graduate of a school or college of pharmacy located outside the United States, which has not been recognized and approved by the board, proof of qualifications shall include evidence that the applicant has successfully passed the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) given by the Foreign Pharmacy Graduate Examination Commission established by NABP.*

ARC 7559A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 155A.13, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Minimum Standards for the Practice of Pharmacy," Iowa Administrative Code.

The amendments were approved at the September 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments remove the authorization for a pharmacist-intern to transfer prescription information, modify controlled substance transfer requirements and procedures in response to changes in federal regulations, and provide for more than one emergency/first dose drug supply in a facility which does not have an institutional pharmacy.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 31, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 124.306, 155A.34, and 155A.15 as amended by 1997 Iowa Acts, Senate File 457.

The following amendments are proposed.

ITEM 1. Amend subrule 8.2(2) as follows:

8.2(2) Transfer of prescription drug order information. For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

a. The transfer of original prescription drug order information for controlled substances listed in Schedules III, IV, or V is permissible between pharmacies on a one-time basis *except as provided in subrule 8.2(3).*

b. The transfer of original prescription drug order information for noncontrolled prescription drugs is permissible between pharmacies without limitation up to the number of originally authorized refills.

c. The transfer is communicated directly between pharmacists ~~or pharmacist-interns~~ or as authorized in subrule 8.2(3).

d. Both the original and the transferred prescription drug orders are maintained for a period of two years from the date of last refill.

e. The pharmacist ~~or pharmacist-intern~~ transferring the prescription drug order information shall:

(1) Write the word "void" on the face of the invalidated prescription drug order;

(2) Record on the reverse of the invalidated prescription drug order the following information:

PHARMACY EXAMINERS BOARD[657](cont'd)

1. The name, address, and, if a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;
2. The name of the pharmacist ~~or pharmacist-intern~~ receiving the prescription drug order information;
3. The name of the pharmacist ~~or pharmacist-intern~~ transferring the prescription drug order information; and
4. The date of the transfer.

f. The pharmacist ~~or pharmacist-intern~~ receiving the transferred prescription drug order information shall:

(1) Write the word "transfer" on the face of the transferred prescription drug order;

(2) Record on the transferred prescription drug order the following information:

1. Original date of issuance and date of dispensing, if different from date of issuance;
2. Original prescription number and the number of refills authorized on the original prescription drug order;
3. Number of valid refills remaining, ~~and~~ the date of last refill, *and, if a controlled substance, the dates and locations of all previous refills*;
4. Name, address, and, if a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred; ~~and~~
5. Name of the pharmacist ~~or pharmacist-intern~~ transferring the prescription drug order information~~.~~*; and*
6. *If a controlled substance, the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.*

g. The original prescription drug order shall be invalidated in the data processing system for purposes of filling or refilling, but shall be maintained in the data processing system for refill history purposes.

h. If the data processing system has the capacity to store and retrieve all the information required in paragraphs "e" and "f" of this subrule, the pharmacist is not required to record this information on the original or transferred prescription drug order.

i. The data processing system shall have a mechanism to prohibit the transfer or refilling of controlled substance prescription drug orders which have been previously transferred.

ITEM 2. Amend subrule 8.2(3) as follows:

8.2(3) Electronic transfer of prescription drug order information between pharmacies. Pharmacies electronically accessing the same prescription drug order records *via real-time, on-line database,* may electronically transfer prescription information, *including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization,* if the following requirements are met.

a. The data processing system shall have a mechanism to send a message to the transferring pharmacy containing the following information:

(1) The fact that the prescription drug order was transferred;

(2) The unique identification number of the prescription drug order transferred;

(3) The name, *address, and DEA registration number* of the pharmacy to which it was transferred *and the name of the pharmacist receiving the prescription information*; and

(4) The date and time of transfer.

b. A pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message as soon as practical, but in no event more than 72 hours from the time of such transfer.

c. For transfers of controlled substance prescriptions, all information requirements included in subrule 8.2(2) shall be satisfied in the electronic system.

ITEM 3. Amend rule 657—8.32(124,155A) as follows:

657—8.32(124,155A) Emergency/first dose drug supply. In any facility which does not have an institutional pharmacy, drugs may be supplied for use by authorized personnel in ~~an~~ *one or more* emergency/first dose drug supply *containers* located at such facility, provided that the emergency/first dose drug supply meets the requirements of this rule.

ARC 7560A

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.201 and 124.301, the Iowa Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendments were approved at the September 10, 1997, regular meeting of the Iowa Board of Pharmacy Examiners.

The amendments modify rules regarding emergency dispensing of Schedule II controlled substances and partial filling of prescriptions for Schedule II controlled substances in certain circumstances. These changes are made in response to recent changes in federal law regarding these same subjects to ensure that Iowa law complies with federal regulations. The Board is rescinding the subrules under rule 10.20(124) simply as a cleanup measure. The temporary controlled substance scheduling actions designated in those subrules have been enacted into Iowa Code by legislative action during past sessions.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on October 31, 1997. Such written materials should be sent to Lloyd K. Jessen, Executive Secretary/Director, Iowa Board of Pharmacy Examiners, Executive Hills West, 1209 East Court Avenue, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 124.306 and 124.308.

The following amendments are proposed.

ITEM 1. Amend rule 657—10.13(124), catchwords, as follows:

657—10.13(124) Controlled substances ~~listed in schedule II~~—requirement of prescription, ***emergency prescriptions, and partial fills.***

ITEM 2. Amend subrule 10.13(4) as follows:

10.13(4) Within ~~72 hours~~ *seven days* after authorizing an emergency oral prescription, the prescribing individual prac-

PHARMACY EXAMINERS BOARD[657](cont'd)

titioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements, the prescription shall have written on its face "Authorization for Emergency Dispensing," and the date of the oral order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the ~~72 hour~~ *seven-day* period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription which had earlier been reduced to writing. The pharmacist shall notify the board if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to do so shall void the authority conferred by this subrule to dispense without a written prescription of a prescribing individual practitioner.

ITEM 3. Amend subrule 10.13(6) as follows:

10.13(6) Partial filling of prescriptions. The partial filling of a prescription for a controlled substance listed in Schedule II is permissible only as follows:

a. If the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription), a partial fill of the prescription is permitted. The remaining portion of the prescription must be filled within 72 hours of the first partial filling; however, if the remaining portion is not or cannot be filled within the 72-hour period, the pharmacist shall so notify the prescribing individual practitioner. No further quantity may be supplied beyond 72 hours without a new prescription.

b. A prescription for a Schedule II controlled substance written for a patient in a long-term care facility (LTCF) or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the practitioner have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is "terminally ill" or an "LTCF patient." A prescription that is partially filled and does not contain the notation "terminally ill" or "LTCF patient" shall be deemed to have been filled in violation of the controlled substances Act. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. ~~Prior to any subsequent partial filling the pharmacist is to determine that the additional partial filling is necessary.~~ The total quantity of Schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed. Schedule II prescriptions for patients in an LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed 60 days from the issue date unless sooner terminated by the discontinuance of medication.

c. Information pertaining to current Schedule II prescriptions for patients in an LTCF or for patients with a medical diagnosis documenting a terminal illness may be maintained in a computerized system if this system has the capability to permit:

1. ~~output~~ *Output* (display or printout) of the original prescription number, date of issue, identification of prescribing individual practitioner, identification of patient, address of the LTCF or address of the hospital or residence of the patient, identification of medication authorized (to include dosage form, strength and quantity), listing of the partial fillings that have been dispensed under each prescription, and the information required in this subrule.

2. Immediate (real-time) updating of the prescription record each time a partial filling of the prescription is conducted.

3. Retrieval of partially filled Schedule II prescription information as required for Schedule III and IV prescription information.

ITEM 4. Rescind subrules **10.20(1)** to **10.20(4)**.

ARC 7561A

PROFESSIONAL LICENSING AND REGULATION DIVISION[193]

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 546.10, the Professional Licensing and Regulation Division hereby gives Notice of Intended Action to adopt Chapter 3, "Vendor Appeals," Iowa Administrative Code.

This chapter establishes the rules and procedures governing the appeal procedures resulting in Requests for Proposal awards.

Any interested person may submit written suggestions or comments on the rules proposed in this Notice of Intended Action. Comments conveyed by mail should be sent to the Administrator, Department of Commerce, Professional Licensing and Regulation Division, 1918 S.E. Hulsizer, Ankeny, Iowa 50021, and received no later than October 28, 1997.

These rules are intended to implement a procedure for vendor appeals for the following Boards/Commission in the Division: Architectural Examining Board, Accountancy Examining Board, Engineering and Land Surveying Examining Board, Landscape Architectural Examining Board, Real Estate Commission, and Real Estate Appraiser Examining Board.

These rules are intended to implement Iowa Code section 546.10.

The following chapter is proposed.

Adopt new 193—Chapter 3 as follows:

CHAPTER 3
VENDOR APPEALS

193—3.1(546) Purpose. This chapter outlines a uniform process for vendor appeals for all boards in the division. The process shall be applicable only when board services are acquired through a formal bidding procedure not handled by the department of general services.

193—3.2(546) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the board may appeal by filing a written notice of

appeal with the board within five days of the date of the award, exclusive of Saturdays, Sundays, and legal state holidays. A written notice may be filed by fax transmission to (515)281-7411. The notice of appeal must be received by the board within the time frame specified to be considered timely. The notice of appeal must state the vendor's complete legal name, street address, telephone number, fax number, and the specific grounds upon which the vendor challenges the board's award, including legal authority, if any. The notice of appeal commences a contested case.

193—3.3(546) Procedures for vendor appeals. Each board's procedures for licensee disciplinary hearings shall be applicable, except as provided in these rules.

3.3(1) Upon receipt of a notice of vendor appeal, the board shall issue a written notice of the date, time and location of the appeal hearing to the aggrieved vendor or vendors. Hearing shall be held within 60 days of the date the notice of appeal was received by the board.

3.3(2) All hearings shall be open to the public.

3.3(3) Discovery requests, if any, must be served by the parties within ten days of the filing of the notice of appeal. Discovery responses or objections are due at least seven business days prior to hearing.

3.3(4) At least three business days prior to the hearing, the parties shall exchange witness and exhibit lists. The parties shall be limited at hearing to the witnesses and exhibits timely disclosed unless the board finds good cause to allow additional witnesses or exhibits at hearing.

3.3(5) The hearing, at the option of the board or administrative law judge, may be conducted in person, by telephone, or on the Iowa communications network. When not conducted in person, all exhibits must be delivered to the board or administrative law judge no less than two business days prior to the hearing.

3.3(6) Oral proceedings shall be recorded either by mechanized means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand shall bear the costs. Copies of tapes of oral proceedings or transcripts of certified shorthand reporters shall be paid for by the requester.

3.3(7) Any party appealing the issuance of a notice of award may petition for stay of the award pending its review. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay. The filing of the petition for stay does not automatically stay the award. The board may grant a stay when it concludes that substantial legal or factual questions exist as to the propriety of the award, the party will suffer substantial and irreparable injury without the stay, and the interest of the public or licensees will not be significantly harmed. A stay may be vacated at any time upon application by any party or the board on its own motion with prior notice to all parties.

3.3(8) The record of the contested case shall include all materials specified in Iowa Code subsection 17A.12(6) and any other relevant procedural documents regardless of their form.

3.3(9) The board or administrative law judge may request the parties to submit proposed findings and conclusions or briefs.

3.3(10) Any request for continuance must be in writing, specifying the grounds, and filed no later than seven business days prior to hearing.

3.3(11) Requests for rehearing shall be made to the board within 20 days of issuing a final decision. A rehearing may be granted when new legal issues are raised, new evidence is available, an obvious mistake is corrected, or when the decision is not necessary to exhaust administrative remedies.

3.3(12) Judicial review of the board's final decision may be sought in accordance with the contested case provisions of Iowa Code section 17A.19.

193—3.4(546) Procedures for board referral to an administrative law judge. The board, in its discretion, may refer a vendor appeal to the department of inspections and appeals for hearing before a qualified administrative law judge. The hearing procedures shall be substantially the same, but the ruling of an administrative law judge acting as the sole presiding officer shall constitute a proposed decision. Board review of a proposed decision shall be according to Iowa Code subsection 17A.15(2) and this chapter. Nothing in this rule shall prevent the board from hearing a vendor appeal with the assistance of an administrative law judge. This rule merely authorizes an alternative procedure.

3.4(1) The proposed decision shall become the final decision of the board 14 days after mailing of the proposed decision, unless prior to that time a party submits an appeal of the proposed decision, or the board seeks review on its own motion.

3.4(2) Notice of an appeal for review of a proposed decision or notice of the board's own review shall be mailed to all parties by the board's executive secretary. Within 14 days after mailing of the notice of appeal or the board's review, any party may submit to the board exceptions to and a brief in support of or in opposition to the proposed decision, copies of which shall be mailed by the submitting party to all other parties to the proceeding. The board's executive secretary shall notify the parties if oral argument will be heard and shall specify whether oral argument will be heard in person, by telephone or on the Iowa communications network. The executive secretary shall schedule the board's review of the proposed decision not less than 30 days after mailing of the notice of appeal or the board's own review.

3.4(3) Failure to appeal a proposed decision will preclude judicial review unless the board reviews on its own motion.

3.4(4) Review of a proposed decision shall be based on the record and limited to the issues raised in the hearing. The issues shall be specified in the notice of appeal of a proposed decision. The party requesting the review shall be responsible for transcribing any tape of the oral proceedings or arranging for a transcript of oral proceedings reported by a certified shorthand reporter.

3.4(5) Each party shall have the opportunity to file exceptions and present briefs. The executive secretary may set deadlines for the submission of exceptions or briefs. If oral argument will be held, the executive secretary shall notify all parties of the date, time and location at least ten days in advance.

3.4(6) The board shall not receive any additional evidence, unless it grants an application to present additional evidence. Any such application must be filed by a party no less than five business days in advance of oral argument. Additional evidence shall be allowed only upon a showing that it is material to the outcome and that there were good reasons for failure to present it at hearing. If an application to present additional evidence is granted, the board shall order the conditions under which it shall be presented.

3.4(7) The board's final decision shall be in writing and it may incorporate all or part of the proposed decision.

These rules are intended to implement Iowa Code section 546.10.

ARC 7585A

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 13, "Occupational and Vendor Licensing," Iowa Administrative Code.

This amendment eliminates an ambiguous subrule.

Any person may make written suggestions or comments on the proposed amendment on or before October 28, 1997. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on October 28, 1997, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

This amendment is intended to implement Iowa Code chapters 99D and 99F.

The following amendment is proposed.

Rescind and reserve subrule 13.6(6).

ARC 7544A

REGENTS BOARD[681]

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 262.69, the Board of Regents hereby gives Notice of Intended Action to amend Chapter 4, "Traffic and Parking at Universities," Iowa Administrative Code.

The proposed amendments will provide and expand the University of Iowa's authority over moving traffic violations by student and nonstudent users of bicycles, skateboards, roller and in-line skates, and the like. Adoption of the proposed amendments will extend to the University the ability to impose fines for violation of University traffic rules. Other amendments will update and clarify language within the rules.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 31, 1997. Such written materials should be directed to R. Wayne Richey, Executive Director, State Board of Regents, Old Historical Building, East Twelfth and Grand, Des Moines, Iowa 50319-0071; fax (515)281-6420.

An opportunity for oral presentations will be provided on November 3, 1997, at 9 a.m. in Room W401, Pappajohn Business Administration Building on the University of Iowa campus in Iowa City, Iowa.

These amendments are intended to implement Iowa Code section 262.69.

The following amendments are proposed.

ITEM 1. Amend rule 681—4.2(262) as follows:

Amend the definition of "Director" as follows:

"Director" means the director of parking *and transportation* at the university or any other person designated by the president of the university to perform any function or duty of the director hereunder.

Add the following new definitions in alphabetical order:

"Handrail" is any railing intended to provide physical support to a pedestrian.

"Immobilization" of a bicycle consists of restricting the bicycle's use by detaining it at the point of infraction with a university locking device.

"Impoundment of a bicycle" consists of removing the owner's locking device, transporting the bicycle to a university facility, and detaining it with a university locking device.

"In-line skates" means shoes which are attached to multiple wheels for the purpose of individual transportation.

"Roller skates" means shoes which are attached to multiple wheels for the purpose of individual transportation.

"Skateboards" means any board or platform with attached wheels used for individual transportation.

"Street furniture" is any structure or accessory in a university pedestrian area or slow zone designed for the benefit of pedestrians. This includes, but is not limited to, benches, tables, lampposts, and trash receptacles.

ITEM 2. Amend subrule 4.3(1) as follows:

4.3(1) These rules shall not apply to moving traffic violations on institutional roads and property of the university. *The director shall establish such rules governing the safe operation of all vehicles, including motor vehicles, motorcycles, skateboards, in-line skates, roller skates and bicycles as the director deems necessary. Such traffic rules shall be available for inspection during business hours at the office of the director and the state board of regents.* Such *traffic* violations ~~will~~ *may also* be charged and prosecuted as violations of Iowa Code chapter 321 and Iowa Code section 262.68.

ITEM 3. Amend subrule 4.3(3) as follows:

4.3(3) The director is delegated authority to make temporary changes in traffic patterns, including establishment of one-way roads and road closures, where necessary because of construction or special events being held on ~~the campus~~ *university property.*

ITEM 4. Amend subrule 4.3(4) as follows:

4.3(4) The director is delegated authority to erect traffic control signs and devices, and to designate pedestrian crosswalks and bicycle lanes, *as well as no bicycling and no skateboard, in-line skating and roller skating areas, bicycle dismount zones and pedestrian-only areas.*

ITEM 5. Amend subrules 4.3(7) and 4.3(8) as follows:

4.3(7) Driving of vehicles, motor vehicles, and motorcycles ~~in~~ *on* parts of institutional roads marked as bicycle lanes is prohibited.

REGENTS BOARD[681](cont'd)

4.3(8) The director is delegated authority to have the university ~~security~~ *public safety* department investigate accidents which occur on ~~the campus~~ *university property.*

ITEM 6. Amend rule 681—4.4(262) as follows:

681—4.4(262) Registration. ~~Vehicles~~ *Motor vehicles and motorcycles* shall be registered as follows:

4.4(1) Students. Every motor vehicle and motorcycle which is operated or maintained by a student ~~within Johnson County, Iowa,~~ *on campus* must be registered with the university and a registration decal must be displayed on the vehicle in the manner prescribed by the director. Any student who operates or maintains a motor vehicle or motorcycle ~~in Johnson County~~ *on campus* or who owns a vehicle which is so operated or maintained is responsible for the proper registration of such vehicle and the display of the registration decal thereon.

4.4(2) Employees. Motor vehicles and motorcycles owned or operated by employees may be registered with the university if the employee so desires, but registration of such vehicles is not required unless the employee ~~desires~~ *is granted* parking privileges on the campus. A registration decal may be issued for display on vehicles registered by employees.

4.4(3) Procedure. Applications for registration shall be submitted to the director in the manner the director prescribes. No student shall register any vehicle owned or actually maintained by another student. No fee shall be charged for registration without parking privileges.

4.4(4) Bicycles. Bicycle registration is optional.

a. To register a bicycle with the university, a current registration form is to be filled out at the parking and transportation offices. Required information includes current name of owner, address, social security number, description of the bicycle, and the bicycle manufacturer's identification number. Proof of name and address is required. Once the registration form is completed, a decal will be issued.

b. Bicycles may also be registered with the cities of Iowa City and Coralville. If these registrations are current and the decal is affixed to the bicycle, the university will accept them in lieu of a university registration.

c. Placement of registration decal. The registration process is completed when the registration decal is permanently and visibly affixed to the down- or seat-tube on the bicycle.

d. An official university bicycle registration decal is valid if the address and ownership given on the registration form are current. Change in ownership of a bicycle must be reported to the parking and transportation office. Proof of change in ownership is required.

ITEM 7. Amend rule 681—4.5(262), introductory paragraph, as follows:

681—4.5(262) Parking facilities. The director may set aside and designate certain areas of the ~~campus~~ *university property* for the parking of motor vehicles, motorcycles, and bicycles, and the use of any lot, ramp, or part of the parking facilities so established may be restricted to students, employees, or visitors. The director shall cause signs to be erected and maintained clearly identifying those areas of the university campus designated for vehicle parking, and any restrictions applicable thereto shall be conspicuously posted.

ITEM 8. Amend subrule 4.5(3) as follows:

4.5(3) Hours of operation. Reasonable hours shall be established *by the director* for the normal operation of the parking facilities and a schedule of hours of operation shall be published and available for public inspection in the office of the director.

ITEM 9. Amend subrule 4.5(6) as follows:

4.5(6) No parking. ~~Vehicle~~ *Motor vehicle and motorcycle* parking on the campus shall be restricted to designated parking facilities, and no parking shall be permitted at any other place on the campus. Vehicles shall not be parked in such a manner as to block or obstruct sidewalks, crosswalks, driveways, roadways, or designated parking stalls. No parking is permitted in prohibited zones, such as in the vicinity of fire hydrants or fire lanes, and such zones shall be conspicuously posted or marked by painted curbs or other standard means. *No parking is permitted on grass or other vegetation or in pedestrian areas.*

ITEM 10. Adopt **new** subrule 4.5(9) as follows:

4.5(9) Violations. Bicycles attached to, or rested against, trees, shrubs, handrails, handicapped parking meters, or limiting access to, or use of, any university facility may be impounded or the owners fined, or both. Bicycles parked inside a university building which is not designated for bicycle parking may be impounded or the owners fined, or both. Bicycles bearing proper registration decals which are attached to, or rested against, street furniture may be ticketed or immobilized and the owners fined. If the bicycles interfere with the use of the furniture, they may be impounded. Bicycles considered abandoned may be labeled for impending impoundment by placing impoundment tags on the bicycles. If the bicycles display the proper registration decals, an attempt will be made to contact the owners to remove the bicycles. If the bicycles do not display the proper registration decals, the owners have two weeks to contact the parking and transportation office from the time the bicycles are tagged until the bicycles may be impounded.

ITEM 11. Amend rule 681—4.6(262), introductory paragraph, as follows:

681—4.6(262) Parking privileges. Students and employees may be granted parking privileges on the campus in accordance with these rules and upon such *other* reasonable terms and conditions as may be established by the university.

ITEM 12. Amend subrules 4.6(7) and 4.6(8) as follows:

4.6(7) Responsibility. Any person who owns or operates a vehicle which is parked on the campus or in whose name the vehicle is registered or *to whom* parking privileges have been granted is responsible for the proper parking of the vehicle at all times when it is on the campus and for all parking violations involving the vehicle.

4.6(8) Liability. Parking privileges granted hereunder constitute a license to use university parking facilities and do not constitute a lease of such facilities or a bailment of the vehicle by the university. Use of university parking facilities is at the owner's or ~~applicant's~~ *visitor's* risk, and the university shall not be liable or responsible for loss of or damage to any vehicle parked on the campus.

ITEM 13. Amend rule 681—4.7(262) as follows:

681—4.7(262) Violations. Sanctions may be imposed for violation of *traffic,* registration and parking rules as follows:

4.7(1) Notice of violations. The university shall give written notice of all parking violations. Such notice may be given by means of a notice of parking violation placed conspicuously on the offending vehicle, and such notice shall constitute constructive notice of the violation to the owner and operator of the vehicle and to any person in whose name

REGENTS BOARD[681](cont'd)

the vehicle is registered or parking privileges have been granted.

4.7(2) ~~Sanction.~~ *Sanctions.* Reasonable monetary sanctions may be imposed upon students, employees, and visitors for violation of *university traffic,* vehicle registration or parking rules. The amount of such sanctions, not to exceed $50 for each offense, shall be established by the university and approved by the state board of regents except sanctions established by statute will be imposed at the current statutory amount. A schedule of all sanctions for *traffic violations,* improper registration and parking shall be published and available for public inspection during normal business hours in the office of the director and in the office of the state board of regents. ~~Registration~~ *Traffic, registration,* and parking sanctions may be assessed against the owner or operator of the vehicle involved in each violation or against any person in whose name the vehicle is registered or parking privileges have been granted and charged to the person's university account. Registration and parking sanctions may be added to student tuition bills or may be deducted from student deposits or from the salaries or wages of employees or from other funds in the possession of the university.

4.7(3) Impoundment *and immobilization.* Any vehicle parked on the campus in violation of parking rules may be impounded, ~~and~~ removed *or immobilized.* The university shall give written notice of impoundment to the owner of the vehicle or to the person in whose name the vehicle is registered or parking privileges have been granted. A reasonable fee may be charged for the cost of impoundment and storage, which fee must be paid prior to the release of the vehicle. Impounded vehicles which are not claimed within 60 days will be deemed abandoned property and may be sold under procedures set forth in Iowa Code chapter 579 and the proceeds of the sale will be applied to the payment of the costs of impoundment, storage and sale. The balance, if any, shall be sent to the owner.

a. Immobilization. Immobilized bicycles bearing proper registration decals may be claimed by proving ownership and payment of immobilization fees and any fines. Immobilized bicycles not bearing proper registration decals may be claimed by proving ownership, registering the bicycle under a valid name and address, and paying the appropriate fines and immobilization fees. Immobilization fees for first-time offenders may be waived after immobilized bicycles have been registered. Immobilized bicycles not reclaimed after two working days may be impounded.

b. Impoundment. Impounded bicycles bearing proper registration may be claimed by proving ownership and paying the impoundment fees and any fines. Impounded bicycles not bearing proper registration decals may be claimed by proving ownership, registering the bicycles under a valid name and address, and paying the appropriate fines and impoundment fees. Impoundment fees for first-time offenders may be waived after impounded bicycles have been registered. All impounded bicycles will be held for 60 days, during which time they may be claimed by the owners upon payment of all outstanding fines and charges. After 60 days, all unclaimed impounded bicycles will be deemed abandoned property and sold pursuant to Iowa law, and the proceeds applied to the costs of impoundment, storage, and sale. The balance, if any, shall be sent to the owner, if known.

4.7(4) Administrative hearing. Students and ~~faculty~~ *employees* may request a hearing and administrative ruling concerning a controversy, based on the imposition of a sanction for a registration or parking violation, or an impoundment procedure, by the appropriate hearing body as set forth in the motor vehicle and bicycle regulations published by the university. Visitors may request the director to conduct a hearing and issue an administrative ruling in such cases.

ARC 7581A

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 421.17, 422.68, 423.23, and 422.53, the Iowa Department of Revenue and Finance hereby gives Notice of Intended Action to amend Chapter 12, "Filing Returns, Payment of Tax, Penalty and Interest," Chapter 13, "Permits," Chapter 15, "Determination of a Sale and Sale Price," Chapter 29, "Certificates," Chapter 30, "Filing Returns, Payment of Tax, Penalty and Interest," and Chapter 107, "Local Option Sales and Service Tax," Iowa Administrative Code.

These amendments implement 1997 Iowa Acts, House File 266, which provides that qualified purchasers, users, or consumers may pay sales, use, or local option sales and service tax directly to the Department of Revenue and Finance subsequent to the receipt of a direct pay permit issued by the Department of Revenue and Finance.

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 October 28, 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 November 7, 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 October 31, 1997.

These amendments are intended to implement Iowa Code section 422.53.

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

The following amendments are proposed.

ITEM 1. Amend rule 701—12.3(422) and its implementation clause as follows:

701—12.3(422) Permits. *A person making retail sales in Iowa is required to obtain a sales tax permit from the department of revenue and finance. Certain qualified purchasers, users, or consumers may obtain a direct pay permit which allows qualified purchasers, users, or consumers to remit tax directly to the department rather than to the retailer at the time of purchase or use. The following provisions govern the issuance of each type of permit.*

12.3(1) Sales tax permits. Sales tax permits will be required of all resident and nonresident persons making retail sales at permanent locations within the state. A permit must be held for each location except that retailers conducting business at a permanent location who also make sales at a temporary location are not required to hold a separate permit for any temporary location. All tax collected from the temporary location shall be remitted with the tax collected at the permanent location. Persons who are registered retailers pursuant to rule 701—29.1(423) relating to use tax may remit sales taxes collected at a temporary location with their quarterly retailers use tax return. Retailers conducting a seasonal business shall also obtain a regular permit. However, returns will be filed on either a quarterly or annual basis depending upon the number of quarters in which sales are made. Sales tax permits will be required of all persons, except cities and counties, who have sales activity from gambling.

12.3(2) Direct pay permits. Effective January 1, 1998, qualified purchasers, users, and consumers of tangible personal property or enumerated services pursuant to Iowa Code chapters 422, 422B, and 423 may remit tax owed directly to the department of revenue and finance instead of the tax being collected and remitted by the seller. A qualified purchaser, user, or consumer may not be granted or exercise this direct pay option except upon proper application to the department and only after issuance of the direct pay permit by the director of the department of revenue and finance.

a. Qualifications for a direct pay permit. To qualify for a direct pay permit all of the following criteria must be met:

(1) The applicant must be a purchaser, user, or consumer of tangible personal property or enumerated services.

(2) The applicant must have an accrual of sales and use tax liability on consumed goods of more than $4,000 in a semimonthly period. A purchaser, user, or consumer may have more than one business location and can combine the sales and use tax liabilities on consumed goods of all locations to meet the requirement of $4,000 in sales and use tax liability in a semimonthly period to qualify, if the records are located in a centralized location. If a purchaser, user, or consumer is combining more than one location, only one direct pay tax return for all of the combined locations needs to be filed with the department. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit.

(3) The applicant must make deposits and file returns pursuant to Iowa Code section 422.52. See subrule 12.3(2), paragraph "d," for further details.

b. Nonqualifying purchases or uses. The granting of a direct pay permit is not allowed for any of the following:

(1) Taxes imposed on the sale, furnishing, or service of gas, electricity, water, heat, pay television service, or communication service.

(2) Taxes imposed under Iowa Code section 422C.3 (sales tax on the rental receipts of qualifying rental motor vehicles), Iowa Code section 423.7 (use tax on the sale or use of motor vehicles), or Iowa Code section 423.7A (use tax on the lease price of qualifying leased motor vehicles).

c. Application and permit information. To obtain a direct pay permit, a purchaser, user, or consumer must properly complete an application form prescribed by the director of revenue and finance and provide certification that the purchaser, user, or consumer has paid sales and use tax to the department of revenue and finance or vendors over the last two years prior to application, an average of $4,000 in a semimonthly period.

Upon approval, the director will issue a direct pay permit to qualifying applicants. The permit will contain direct pay permit identifying information including a direct pay permit identification number. The direct pay permit should be retained by the permit holder. When purchasing from a vendor, a permit holder should give the vendor a certificate of exemption containing the information as set forth in rule 701—15.3(422,423).

d. Remittance and reporting. Sales, use, and local option tax that is to be reported and remitted to the department will be on a semimonthly basis. Remittance of tax due under a direct pay permit will begin with the first quarter after the direct pay permit is issued to the holder. The tax to be paid under a direct pay permit must be remitted directly to the department by electronic funds transfer (EFT) only. A permit holder need not have remitted by EFT prior to obtaining a direct pay permit to qualify for such a permit. However, a permit holder must remit taxes due by EFT for transactions entered into on or after the date the permit is issued. All local option sales and service tax due must be reported and remitted at the same time as the sales and use taxes due under the direct pay permit for the corresponding tax period. However, local option sales and service tax should not be included in the tax base for determining qualification for a direct pay permit or frequency of remittance. Reports should be filed with the department on a quarterly basis. The director may, when necessary and advisable in order to secure the collection of tax due, require an applicant for a direct pay permit or a permit holder to file with the director a qualified surety bond as set forth in Iowa Code section 422.52. A permit holder who fails to report or remit any tax when due is subject to the penalty and interest provisions set forth in Iowa Code section 422.52.

e. Permit revocation and nontransferability. A direct pay permit may be used indefinitely unless it is revoked by the director. A direct pay permit is not transferable and it may not be assigned to a third party. The director may revoke a direct pay permit at any time the permit holder fails to meet the requirements for a direct pay permit, misuses the direct pay permit, or fails to comply with the provisions in Iowa Code section 422.53. If a direct pay permit is revoked, it is the responsibility of the prior holder of the permit to inform all vendors of the revocation so the vendors may begin to collect tax at the time of purchase. A prior permit holder is responsible for any tax, penalty, and interest due for failure to notify a vendor of revocation of a direct pay permit.

f. Record-keeping requirements. The parties involved in transactions involving a direct pay permit shall have the following record-keeping duties:

(1) Permit holder. The holder of a direct pay permit must retain possession of the direct pay permit and copies of all exemption certificates qualifying under rule 701—15.3(422,423) that are given to vendors pursuant to the di-

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

rect pay permit. The permit holder must keep a record of all transactions made pursuant to the direct pay permit in compliance with rule 701—11.4(422,423).

(2) Vendor. A vendor must retain a valid exemption certificate under rule 701—15.3(422,423) which is received from the direct pay permit holder and retain records of all transactions engaged in with the permit holder in which tax was not collected, in compliance with rule 701—11.4(422,423). A vendor's liability for uncollected tax is governed by the liability provisions of a seller under an exemption certificate set forth in rule 701—15.3(422,423).

This rule is intended to implement Iowa Code sections 422.45(20) and 422.53 *as amended by 1997 Iowa Acts, House File 266.*

ITEM 2. Amend rule 701—13.1(422) and its implementation clause as follows:

701—13.1(422) Retail sales tax permit required. When used in this chapter or any other chapter relating to retail sales the word "permit" shall mean "a retail sales tax permit."

A person shall not engage in any Iowa business subject to tax until the person has procured a permit except as provided in 13.5(422). There is no charge for a retail sales tax permit. If a person makes retail sales from more than one location, each location shall be required to hold a permit. Retail sales tax permits are issued to retailers for the purpose of making retail sales of tangible personal property or taxable services. Persons shall not make application for a permit for any other purpose. *For details regarding direct pay permits see rule 701—12.3(422).*

This rule is intended to implement Iowa Code section 422.53 *as amended by 1997 Iowa Acts, House File 266.*

ITEM 3. Amend rule 701—15.3(422,423) as follows:

Amend 701—15.3(422,423), catchwords, as follows:

701—15.3(422,423) Certificates of resale, *direct pay permits,* processing, and fuel used in processing.

Amend subrule 15.3(1) as follows:

15.3(1) General provision. The gross receipts from the sale of tangible personal property for the purpose of resale or processing by the purchaser are not subject to tax as provided by the Iowa sales and use tax statutes. *In addition, a seller of tangible personal property need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue and finance.* However, the following are requirements for the exemption *and noncollection of tax by a seller when a direct pay permit is involved*:

a. The sales tax liability for all sales of tangible personal property is upon the seller (and on and after March 13, 1986, the purchaser as well) unless the seller takes in good faith from the purchaser a valid exemption certificate stating that the purchase is for resale, ~~or for~~ processing, *or the tax will be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must include the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits see rule 701—12.3(422).* Where tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate which is taken in good faith by the seller, and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, *or the purchaser fails to pay tax to the department under a direct pay permit issued by the department,* the purchaser is solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for purposes of resale or for processing. Since Iowa Code section 422.47 defines a "valid exemption certificate" as one supplied by the director, the director cannot for periods commencing on or after January 1, 1979, and ending on or before June 30, 1982, recognize an exemption certificate other than the director's own. This exemption certificate must be completed as to the information required on the form in order to be valid.

Amend rule **701—15.3(422,423)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(13), 422.42(16), 422.47, 422.53 *as amended by 1997 Iowa Acts, House File 266,* and 423.1(1).

ITEM 4. Amend rule 701—29.3(423) and its implementation clause as follows:

701—29.3(423) Certificates of resale, *direct pay permits,* or processing. When tangible personal property or service is sold in interstate commerce for delivery in Iowa, it shall be presumed that such property or service is sold for use in Iowa. The registered seller is required to collect use tax from the purchaser. If the tangible personal property or service sold for delivery in Iowa is not sold for use in Iowa and is not subject to use tax, the seller shall be required to secure a properly written certificate from the purchaser showing the exempt use to be made of the property or service. *A seller may also take a valid exemption certificate and not collect use tax from a purchaser if the purchaser pays tax on the purchase directly to the department pursuant to a valid direct pay permit issued by the department.*

When the registered seller repeatedly sells the same type of property or service to the same Iowa customer for resale or processing, the seller may, at the seller's risk, accept a blanket certificate covering more than one transaction. *For more information regarding exemption certificates and direct pay permits, see rules 701—12.3(422) and 15.3(422,423), respectively.*

Suggested forms of certificate may be obtained from the department upon request.

These rules are intended to implement *Iowa Code section 422.53 as amended by 1997 Iowa Acts, House File 266, and* Iowa Code chapter 423.

ITEM 5. Amend rule **701—30.1(423)** as follows:

Amend subrule 30.1(2) as follows:

30.1(2) The purchaser for use in this state shall pay tax to the seller, if the seller is registered with the department to collect use tax for the state. If the seller is not registered with the department to collect use tax for the state, the purchaser shall remit the tax directly to the department. *A purchaser who possesses a valid direct pay permit issued by the department does not remit tax to the seller. Instead, the purchaser*

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

remits tax directly to the department. For further details regarding direct pay permits see rule 701—12.3(422).

Amend rule **701—30.1(423)**, implementation clause, as follows:

This rule is intended to implement Iowa Code *section 422.53 as amended by 1997 Iowa Acts, House File 266, and Iowa Code* sections 423.6, 423.9, 423.10, and 423.14 ~~and 1995 Iowa Acts, Senate File 431~~.

ITEM 6. Amend rule 701—107.8(422B), introductory paragraph, as follows:

701—107.8(422B) Contacts with county necessary to impose collection obligation upon a retailer. Before any retailer can be required to collect the local option sales or service tax certain minimal connections must exist between the county imposing the tax and the retailer. These connections are required by the due process clause of the Fourteenth Amendment and the commerce clause of the United States Constitution. Basically, for due process purposes, the retailer must be purposefully directing its activities at the county's residents in such a way that the retailer is availing itself of an economic market in the county. Maintaining any sort of office, sending any solicitor or salesperson, whether independent contractor or employee, transporting property which the retailer sells into the county in the retailer's own vehicle, or continuous solicitation of business within a county, are nonexclusive examples of purposefully directed activities for which the obligation to collect local option sales tax can be imposed upon a retailer. Quill Corporation v. North Dakota, 504 U.S. 298, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992). An Iowa retailer's physical presence within a county is no longer necessary to require the retailer to collect the county's local option tax. However, a retailer located outside the state of Iowa who does not have a physical presence in the county imposing the local option tax cannot be required, under the commerce clause of the United States Constitution, to collect this state's local option sales tax; Quill, supra. Such physical presence in the county exists if it occurs through the retailer's presence or by the presence of independent contractors who act on behalf of the retailer. *A retailer that sells to a purchaser that possesses a valid direct pay permit issued by the department need not collect local option sales or service tax from the purchaser. Instead, the purchaser must remit tax directly to the department. However, a retailer should obtain a valid exemption certificate from the purchaser for the tax not collected. For further details regarding direct pay permits see rule 701—12.3(422) and for further details regarding exemption certificates see rule 701—15.3(422,423).*

ITEM 7. Amend rule **701—107.8(422B)**, implementation clause, as follows:

Rules 107.1(422B) to 107.8(422B) are intended to implement *Iowa Code section 422.53 as amended by 1997 Iowa Acts, House File 266, and* Iowa Code chapter 422B.

ARC 7542A

SOIL CONSERVATION DIVISION[27]

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 161A.4(1), the Division of Soil Conservation gives Notice of Intended Action to amend Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

These amendments are being proposed to make corrective changes and eliminate annual emergency rule filings previously necessary for new appropriations. Programs no longer eligible for funding are rescinded, and certain technical specifications are updated. All references to the U.S. Department of Agriculture agency formerly known as the "Soil Conservation Service" are changed to "Natural Resources Conservation Service" or "NRCS."

Any interested person may submit written suggestions or comments on the amendments to William McGill, Chief, Financial Incentives Bureau, Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, no later than 4:30 p.m., Monday, November 3, 1997. To telephone comments, contact the Financial Incentives Bureau at (515)281-5851 or fax (515)281-6170.

A public hearing will be held on Monday, November 3, 1997, at 2 p.m. in the south half of the Second Floor Conference Room of the Wallace State Office Building, East Ninth and Grand Avenue, Des Moines, Iowa. Comments presented at the hearing may be presented either orally or in writing.

These amendments are intended to implement Iowa Code chapter 161A.

The following amendments are proposed.

ITEM 1. Adopt **new** subrule 10.32(5) as follows:

10.32(5) Agricultural land converted to nonagricultural land. If land subject to a performance or maintenance agreement is converted to a nonagricultural use that does not require a permanent soil and water conservation practice which has been established with financial incentives, the practice shall not be removed until the owner refunds an amount of the payment received.

a. Amount of refund. The amount of refund will be the same as 10.32(3)"c."

b. Funds will be deposited into an account established by the district.

c. Use of the funds will be limited to providing financial incentives under this chapter.

d. Districts will notify the division when such funds are collected.

ITEM 2. Amend rule 27—10.41(161A), introductory paragraphs, to read 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~~

SOIL CONSERVATION DIVISION[27](cont'd)

~~General Assembly provided $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.~~ *Funds are appropriated each year by the general assembly.*

~~Funds available for distribution for all years are qualified by subrule 10.41(7).~~

The division has four years to encumber or obligate these funds before they revert to the state's general fund. This rule addresses the distribution of these appropriations among the incentive programs for soil erosion control established by the division in accordance with the authorities extended in Iowa Code chapter 161A. The rule is also consistent with the restrictions imposed by language of the appropriations bills.

Except for the programs authorized in subrules 10.41(2), 10.41(4), 10.41(5), ~~10.41(7)~~ and 10.41(8), these funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 50 percent of the approved cost for permanent soil conservation practices.

ITEM 3. Amend subrule 10.41(1) to read as follows:

10.41(1) Voluntary program. Ninety percent of the appropriation is to be used for cost-sharing to provide state funding of not more than 50 percent of the approved cost of permanent soil and water conservation practices or for incentive payments to encourage management practices to control soil erosion on land that is now row-cropped.

Not more than 30 percent of a district's original and supplemental allocation may be used for the establishment of management practices listed in subrules 10.82(1) and 10.82(2).

The commissioners of a district may allocate voluntary program funds for the restoration of permanent soil and water conservation practices which are damaged or destroyed because of a disaster emergency. Funds may be used for construction, reconstruction, installation, or repair of projects. The commissioners must determine that funds are necessary to restore permanent practices to prevent erosion in excess of applicable soil loss limits caused by the disaster emergency. Funds cannot be used unless a state of disaster emergency pursuant to a proclamation as provided in Iowa Code section 29C.6 has been declared. Funds can be used only if federal or state disaster emergency funds are not adequate. Funds do not have to be allocated on a cost-share basis. Districts are required to report to the division regarding restoration projects and funds allocated for projects.

ITEM 4. Rescind and reserve rule **27—10.42(312)**.

ITEM 5. Rescind and reserve rule **27—10.55(161A,312)**.

ITEM 6. Rescind and reserve rule **27—10.58(161A)**.

ITEM 7. Amend subrule 10.60(1) as follows:

10.60(1) Voluntary.

a. The state will cost-share 50 percent of the cost certified by the certifying technician as being reasonable, proper, and incurred by the applicant in voluntarily installing approved, permanent soil conservation practices. Eligible costs include machine hire or use of the applicant's equipment, needed materials delivered to and used at the site, and labor required to install the practice.

b. For currently funded fiscal years, the division will make one-time payments of up to $10 per acre for no-tillage, ridge-till and strip-till; $6 per acre for contouring; and ~~$15 per acre for contour strip-cropping~~ *50 percent of the cost up to $25 per acre for strip-cropping, field borders and filter strips.*

c. Funding for the restoration of permanent practices damaged or destroyed because of a disaster (see 10.41(1)) does not have to be allocated on a cost-share basis.

ITEM 8. Rescind subrules **10.60(8)** and **10.60(9)**.

ITEM 9. Amend subrule **10.74(5)**, paragraph **"a,"** as follows:

a. Maintenance agreement required. As a condition for receipt of any financial incentives funds for permanent soil and water conservation practices, the owner of the land on which the practices have been installed shall agree to maintain those practices for a minimum of 20 years after the date of the agreement, ~~except for fencing installed under the woodland fencing program which shall be maintained for a period of 10 years~~ *except for practices Planned Grazing System (556) and Pasture and Hayland Planting (512) which shall be maintained for a period of ten years.*

ITEM 10. Amend subrule **10.81(3)**, paragraph **"d,"** to read as follows:

d. Where a livestock watering pipe is installed in a grade stabilization structure. *Cost share is limited to $250 for the watering pipe and valves. Payment will be made only if the structure is fenced.*

ITEM 11. Amend subrule 10.82(2) to read as follows:

10.82(2) Temporary practices.

a. ~~Iowa till. Reduced tillage practices, used in conjunction with row-crop production to reduce sediment damage and soil depletion caused by wind or water.~~ *Critical area planting. Establishment of vegetative planting to control sediment movement from severely eroding areas by stabilizing the soil. These plantings would include vegetation such as trees, shrubs, vines, grasses or legumes.*

b. Contouring. Farming sloping cultivated land in such a way that tillage operations, planting and cultivating are done on the contour. This includes following established grades of terraces, diversions, or contour strips.

c. Contour strip-cropping. Growing crops in a systematic arrangement of strips or bands on the contour to reduce water erosion. The crops are arranged so that a strip of grass or close-growing crop is alternated with a strip of clean-tilled crop or fallow or a strip of grass is alternated with a close-growing crop.

d. Field border. A strip of perennial vegetation established at the edge of a field, to be used as a turn area in lieu of end-rows up and down hill to control erosion and provide wildlife food and cover.

e. Filter strips. A strip or area of vegetation for removing sediment, organic matter and other pollutants from runoff.

ITEM 12. Rescind and reserve subrule **10.82(3)**, paragraphs **"a"** and **"k,"** as follows:

~~a. Critical area planting. Establishment of vegetative planting to control sediment movement from severely eroding areas by stabilizing the soil. These plantings would include vegetation such as trees, shrubs, vines, grasses or legumes.~~

~~k. Fencing. Fencing means enclosing, dividing, or separating an area of forest land with a suitable permanent structure that acts as a barrier to livestock. This practice shall only be eligible for funding under the woodland fencing program established in rule 27—10.53(161A).~~

SOIL CONSERVATION DIVISION[27](cont'd)

ITEM 13. Amend rule 27—10.84(161A,312) to read as follows:

27—10.84(161A,312) Specifications. These specifications and the general conditions, rule 27—10.81(161A,312) shall be met in all cases. In each specification the listed USDA-~~Soil Conservation Service~~ *Natural Resources Conservation Service* specification in force on the date indicated in these rules or the Department of Natural Resources Forestry Technical Guide shall be used. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

10.84(1) Critical area planting. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 342, ~~April 1981~~ *October 1988*.

10.84(2) Diversion. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 362, ~~October 1982~~ *June 1987*.

10.84(3) Field windbreak. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV(D), Woodland Tree Planting, Code No. 612, ~~February 1983~~ *May 1992*, Field Windbreak, Code No. 392, ~~June 1981~~ *February 1992*.

10.84(4) Grade stabilization structure. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Grade Stabilization Structure, Code No. 410, ~~June 1984~~ *January 1986*.

10.84(5) Grass strips. Grass strips shall be perennial vegetation planted parallel to road segments designated as qualified in the WECIP. The strips shall have a minimum width of 50 feet and the maximum width to be funded shall be 50 feet. The grass strip shall not be used as a road and grazing and hay production will not be permitted. Seeding and fertilizer rates shall be in accordance with the specifications contained in USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 512, Pasture and Hayland Planting, ~~September 1981~~ *August 1990*. There shall be no nurse crop. The strip may be mowed one time after July 15 of the seeding year for weed control.

10.84(6) Grassed waterway or outlet. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Grassed Waterway, Code No. 412, ~~November 1981~~ *April 1990*.

~~**10.84(7)** Iowa Till. All operations shall be on a reasonable contour. The ground surface shall have at least 50 percent cover by crop residue material after planting. The line transect method of measuring as described in USDA Agricultural Handbook No. 537, December 1978, page 50, shall be used in determining percent ground cover.~~

10.84(8) Pasture and hayland planting. USDA-~~SCS~~ *NRCS*-IOWA, Technical Field Guide, Section IV, Code No. 512, ~~September 1981~~ *August 1990*.

10.84(9) Terrace. USDA-~~SCS~~-*NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 600, ~~January 1984~~ *May 1991*.

10.84(10) Underground outlet. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 620, ~~November 1983~~ *March 1991*.

10.84(11) Water and sediment control basin. USDA-~~SCS~~ *NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 638, November 1983.

10.84(12) No-till planting. Seedbed preparation and planting are completed in one operation by a coulter mounted in front of the planter. Starter fertilizers and pesticides are usually applied during the planting operation. Soil disturbance is 10 percent or less depending on the type of coulters and openers used. Contact herbicides are often used to burn down competing vegetation growing at planting time. An early application of a preemergence herbicide may lessen the need for the contact burn-down application. Preemergence herbicide may lessen the need for the contact burn-down application. Preemergence or postemergence herbicides are used to control weeds during the growing season. Cultivation may be performed as needed.

Contouring is necessary on slopes that normally require contouring with conventional tillage.

10.84(13) Ridge-till. Seed preparation and planting are completed in one operation on ridges 8-9 inches in height. Crop residue may be left undisturbed or chopped or shredded. Planting is completed by scalping the top of the ridge with a sweep or disk. Less than one-third of the field area is disturbed. Band application of preemergence herbicides along with mechanical cultivation normally controls most weed species. Ridges are reconstructed during the last cultivation of the season.

On the slopes exceeding 4 percent, ridges are to be constructed on the contour to avoid excessive erosion. No-till planting on ridges is also included in this category. No more than 10 percent of the surface area is disturbed with this type of planting.

Contouring is necessary on slopes that normally require contouring with conventional tillage.

10.84(14) Strip-till. Seedbed preparation and planting are completed in one operation by a rotary tillage tool or other similar type equipment. Crop residue may be left undisturbed or chopped or shredded. Planting is completed by tilling a seedbed which is no more than one-third of the field area. Weed control is accomplished with a combination of mechanical cultivation and herbicides.

Contouring is necessary on slopes that normally require contouring with conventional tillage.

10.84(15) Contouring. USDA-~~SCS~~*NRCS*-IOWA, Field Office Technical Guide, Section IVA, Code No. 330, ~~February 1972~~ *November 1991*.

10.84(16) Contour strip-cropping. USDA-~~SCS~~*NRCS*-IOWA, Field Office Technical Guide, Section IV, Code No. 585-A, ~~February 1976~~ *November 1991*.

~~**10.84(17)** Fencing. USDA-SCS-IOWA, Field Office Technical Guide, Section IV, Code No. 382-1, January 1984.~~

10.84(18) Filter strips. USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 393, January 1989.

10.84(19) Field borders. USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 386, January 1987.

This rule is intended to implement Iowa Code chapter 161A.

ARC 7543A

SOIL CONSERVATION DIVISION[27]

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 161A.4(1), the Division of Soil Conservation gives Notice of Intended

SOIL CONSERVATION DIVISION[27](cont'd)

Action to amend Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

These amendments are being proposed to make corrective changes and update technical specifications. Payment methods and the accompanying rates are clarified. All references to the U.S. Department of Agriculture agency formerly known as the "Soil Conservation Service" are changed to "Natural Resources Conservation Service" or "NRCS".

Any interested person may submit written suggestions or comments on the amendments proposed in this Notice of Intended Action. Such written materials should be directed to William McGill, Chief, Financial Incentives Bureau, Division of Soil Conservation, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319, and must be received by the Division no later than 4:30 p.m., Monday, November 3, 1997. To telephone comments, contact the Financial Incentives Bureau at (515)281-5851 or fax (515)281-6170.

A public hearing will be held on Monday, November 3, 1997, at 2 p.m. in the south half of the Second Floor Conference Room of the Wallace State Office Building, East Ninth and Grand Avenue, Des Moines, Iowa. Comments at the hearing may be presented either orally or in writing.

These amendments are intended to implement Iowa Code chapter 161A.

The following amendments are proposed.

ITEM 1. Amend rule 27—12.50(161C) to read as follows:

27—12.50(161C) Water protection practices account. This part defines procedures for allocation, recall and reallocation of water protection practices funds to soil and water conservation districts and to the division's reserve fund. These funds shall not be used alone or in combination with other public funds to provide a financial incentive payment greater than 75 percent of the approved cost for practices listed in ~~12.77(1) and~~ 12.84(161C), or 50 percent in *12.77(1),* 12.77(2) and 12.77(3).

ITEM 2. Amend rule 27—12.76(161C) to read as follows:

27—12.76(161C) Specifications. In addition to specifications defined herein, rule 27—10.84(161A) specifications shall apply.

12.76(1) Filter strips. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 393, January ~~1989~~ *1988.*

12.76(2) Field borders. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 386, ~~January 1987~~ *July 1988.*

12.76(3) Waste management systems. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 312, January ~~1989~~ *1997.*

12.76(4) Agricultural drainage well closure. Iowa Department of Natural Resources, Technical Information Series 15, 1988, Guidelines for Plugging Abandoned Water Wells.

12.76(5) Agricultural drainage well plugging and cistern removal. Iowa Department of Natural Resources, Technical Information Series 15, 1988, Guidelines for Plugging Abandoned Water Wells.

12.76(6) Tile outlet from plugged agricultural drainage wells. Underground Outlet, USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 620, ~~January 1989~~ *March 1991.*

12.76(7) Subsurface drain. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 606, February 1986.

ITEM 3. Amend subrule 12.77(1) to read as follows:

12.77(1) Cost-share rates. Cost-share rates for practices designated in rule 12.72(161C) shall be ~~75~~ *50* percent of the actual or estimated cost of installation, whichever is less, except for strip-cropping contour *and field borders.* Cost-share rates for *12.72(3), field borders, and* 12.72(5), strip-cropping contour, shall be a one-time payment of ~~up to $15 per acre~~ *50 percent of the cost up to $25 per acre.*

ITEM 4. Amend rule 27—12.82(161C), introductory paragraph, to read as follows:

27—12.82(161C) Eligible practices. Land enrolled in the Conservation Reserve Program is only eligible for woodland establishment, management and protection practices. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. *All practices listed below are permanent.*

ITEM 5. Adopt new subrule 12.82(6) and renumber existing subrules **12.82(6)** to **12.82(8)** as **12.82(7)** to **12.82(9)** as follows:

12.82(6) Riparian forest buffer. To establish an area of trees or shrubs, or both, located adjacent to and up-gradient from water bodies.

ITEM 6. Amend rule 27—12.83(161C) to read as follows:

27—12.83(161C) Specifications. These specifications and the general conditions shall be met in all cases. In each specification the listed USDA-~~Soil Conservation Service~~ *Natural Resources Conservation Service* specification in force on the date indicated in these rules or the Department of Natural Resources Forestry Technical Guide shall be used.

12.83(1) Farmstead windbreak. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 380, ~~January 1989~~ *April 1992.*

12.83(2) Field windbreak. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 392, ~~January 1989~~ *February 1992.*

12.83(3) Timber stand improvement. Department of Natural Resources Forestry Technical Guide.

12.83(4) Tree planting. Department of Natural Resources Forestry Technical Guide.

12.83(5) Site preparation natural regeneration. Department of Natural Resources Forestry Technical Guide.

12.83(6) Riparian forest buffer. USDA-NRCS-Iowa, Field Office Technical Guide, Section IV, Code No. 392, Interim.

12.83(~~6~~)*(7)* Rescue treatment. Department of Natural Resources Forestry Technical Guide.

12.83(~~7~~)*(8)* Planned grazing systems. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 556, November 1986.

12.83(~~8~~)*(9)* Conservation cover. USDA-~~SCS~~ *NRCS*-Iowa, Field Office Technical Guide, Section IV, Code No. 327, ~~January 1988~~ *March 1997.*

ITEM 7. Amend subrule 12.84(4) to read as follows:

12.84(4) Tree planting.

a. 75 percent of the actual cost, not to exceed $365 per acre, for tree planting including the following:

(1) Establishing ground cover,

(2) Trees and tree planting operations,

SOIL CONSERVATION DIVISION[27](cont'd)

(3) Weed and pest control.
(4) Mowing, disking, and spraying.
b. 75 percent of actual cost, not to exceed $120 per acre for woody plant competition control.
c. Actual cost, not to exceed the lesser of $8 per rod or $45 per acre protected, for permanent fences, to protect planted area from grazing, excluding boundary and road fencing.

ITEM 8. Adopt new subrule 12.84(6) and renumber existing subrules **12.84(6)** to **12.84(8)** as **12.84(7)** to **12.84(9)** as follows:

12.84(6) Riparian forest buffer. 75 percent of actual cost or estimated cost, whichever is less.

ITEM 9. Amend renumbered subrule 12.84(8) to read as follows:

12.84(8) Planned grazing systems. 75 percent of actual cost or estimated cost whichever is less. Does not include boundary fences or road fences. Fencing limited to $8 per rod. *Development of a water source is not eligible.*

ITEM 10. Adopt new rule 27—12.85(161C) as follows:

27—12.85(161C) Special practice and cost-share procedures eligibility. Districts may submit requests to establish eligible practices, develop cost-share procedures, experiment with new conservation practices and explore new technologies with approval of the state soil conservation committee.

12.85(1) District designation. Districts shall submit to the SSCC the description of their intentions which could include:
a. Type of practice.
b. Cost-share rate.
c. Resource to be protected.
d. Estimated cost.
e. Landowner interest.
f. Technology to be addressed.

12.85(2) State soil conservation committee evaluation. The state soil conservation committee shall examine the district submission under 12.85(1) with respect to the following criteria.
a. The public and current use of the resource to be protected.
b. The nature, extent, and severity of the problem to be addressed.
c. The degree to which the request focuses practice or technology application in a manner that will achieve a soil erosion or water quality benefit from the funds available.
d. Whether a specification can be developed by NRCS or DNR for the new technology or practice.

12.85(3) Review time limit. The state soil conservation committee shall approve or disapprove the district designation within 90 days of receipt by the division.

12.85(4) Disapproval of designation. In the event of disapproval of district requests, the state soil conservation committee shall inform the district of the reason for disapproval.

This rule is intended to implement Iowa Code chapters 161A and 161C.

ARC 7579A

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Notice of Termination

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 30, 1997, as **ARC 7407A** to amend Chapter 14, "Access to Facilities," and adopt Chapter 16, "Dial-Up Access From Remote Locations," Iowa Administrative Code.

The Notice proposed an amendment to Chapter 14 requiring authorized users to provide software and directory procedures to prevent unlimited access to the Internet. Chapter 16 provided rules governing remote dial-up access from authorized and unauthorized facilities. Comments were timely received regarding the proposed rules. After considering the comments, the Commission determined that the changes needed were significant enough to terminate the Notice of Intended Action. On September 10, 1997, the Commission approved revised rules for Chapter 14 and Chapter 16 which are published herein as **ARC 7578A**.

ARC 7578A

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

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 8D.3, the Iowa Telecommunications and Technology Commission hereby gives Notice of Intended Action to amend Chapter 14, "Access to Facilities," and adopt Chapter 16, "Dial-Up Access From Remote Locations," Iowa Administrative Code.

Item 1 adds a new subrule requiring authorized users to obtain software applications that will prevent unauthorized use of the Internet or its successors from remote unauthorized sites.

Item 2 describes the parameters for the appropriate use of the dial-up capability of the fiberoptic network. The chapter also describes those persons who are allowed access to the Internet and its successors using the fiberoptic network.

The Commission has determined that the proposed amendments allowing for remote dial-up access may have an impact on small business. The Commission has considered the factors listed in Iowa Code section 17A.31(4). The Commission 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 October 28, 1997, to the Iowa Telecommunications and Technology Commission, P.O. Box 587, Johnston, Iowa

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

50131-0587. 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 section 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.

The proposed amendments may necessitate additional expenditures by political subdivisions or agencies and entities that contract with political subdivisions. The amendment to Chapter 14 requires authorized users to provide adequate software and directory blocking protocols to prevent unauthorized access to the Internet.

Any interested person may make written suggestions or comments on these amendments on or before October 28, 1997. Written comments or suggestions should be directed to Ron Koontz, ICN, P.O. Box 587, Johnston, Iowa 50131-0587. If written comments or suggestions are hand-delivered, the address is Building W-4, Railroad Avenue, Camp Dodge, Johnston, Iowa 50131.

Persons who would like to convey their views orally should contact Ron Koontz at (515)323-4692 or at the address indicated above.

A public hearing will be conducted in person and on the fiberoptic network on October 29, 1997, at 9 a.m. at STARC Armory, Johnston, Iowa 50131 and at the following sites:

Algona Armory ICN Classroom
1511 North POW Camp Road
Algona 50511

Boone Flight Facility ICN Classroom
700 Snedden Drive
Boone 50036

Burlington Armory ICN Classroom
2500 Summer St.
Burlington 52601

Carroll Armory
1712 LeClark Road
Carroll 51401

Cedar Rapids Armory Classroom 4
10400 18th St. SW
Cedar Rapids 52404

Centerville Armory ICN Classroom
RR 1 Box 125 B (1 Mile East of Hwy 5 on Dewey Rd.)
Centerville 52544

Charles City Armory ICN Classroom
2003 Clark St.
Charles City 50616

Corning Armory Room 111
RR 1 Box 190
Corning 50841

Council Bluffs Armory ICN Room
2415 Kanesville Rd.
Council Bluffs 51503

Davenport Public Library Meeting Room A
321 Main Street
Davenport 52801

Dubuque Armory ICN Classroom
195 Radford Road
Dubuque 52002

Iowa Falls Armory ICN Classroom
217 Georgetown Rd.
Iowa Falls 50126

Keokuk Armory ICN Classroom
170 Boulevard Rd.
Keokuk 52632

Knoxville Armory
1015 N. Lincoln
Knoxville 50138

LeMars Armory ICN Classroom
1050 Lincoln St. SE
LeMars 51031

Muscatine Armory ICN Classroom
1421 Park Ave.
Muscatine 52761

Ottumwa Armory ICN Classroom
2858 North Court Road
Ottumwa 52501

Shenandoah Armory ICN Classroom
601 Ferguson Rd.
Shenandoah 51601

Sioux Center Community Center ICN Classroom
102 South Main St.
Sioux Center 51250

Spencer Armory ICN Classroom
11 East 23rd St.
Spencer 51301

Storm Lake Armory
1601 Park Street
Storm Lake 50588

Waterloo Armory ICN Classroom
3306 Airport Blvd.
Waterloo 50703

Persons may present their views at this hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapter 8D.

The following amendments are proposed.

ITEM 1. Amend 751—14.1(8D) by adding the following **new** subrule:

14.1(2) Each authorized user who maintains a server or modem pool for the purpose of providing remote dial-up access to the authorized user's server or modem pool shall provide adequate software and directory procedures to block unauthorized Internet use from a remote unauthorized site. Each authorized user shall include a statement in its written policy describing the software and directory procedures it has implemented to comply with this rule. Failure to install appropriate software or implement appropriate directory procedures will subject an authorized user to the provisions of 751—Chapter 10.

ITEM 2. Adopt **new** Chapter 16 as follows:

CHAPTER 16
DIAL-UP ACCESS FROM REMOTE LOCATIONS

751—16.1(8D) Establish a modem pool. The commission may establish a modem pool to provide dial-up access and deployment of services to an authorized user's server or modem

pool at or between authorized sites. Dial-up access is permitted to obtain or use a service offered by an authorized user or to conduct the official business of an authorized user using, but not limited to, transmission control protocols and Internet protocols (TCP/IP). TCP/IP protocols provide communication across interconnected networks and between computers with diverse hardware architectures and various operating systems.

751—16.2(8D) Permitted remote dial-up access to the network through an authorized user's local area network or modem pool. An authorized user may allow other authorized users or members of the general public to use a modem to access an authorized user's server or modem pool for the following purposes:

16.2(1) To obtain or use a service offered by an authorized user or to conduct the official business of an authorized user using TCP/IP protocols or the Internet or its successors.

16.2(2) To access information downloaded from the Internet, its successors or other sources, to an authorized user's server using available or future technology and software applications.

16.2(3) To access the State of Iowa Libraries Online (SILO) network for libraries.

16.2(4) An authorized user shall prevent a person from gaining extended access to the Internet or its successors from a remote dial-up location unless specifically provided for in this chapter.

751—16.3(8D) Remote dial-up access for teleconferencing purposes. An authorized user may use the teleconferencing services of a private provider or the fiberoptic network from remote dial-up locations. Use of the teleconferencing services of the network must be within the written mission statement of the authorized user and may only be used to conduct the official business of the authorized user. The authorized user must order the service. Connections to the teleconferencing service maintained by the commission may be made from authorized facilities and unauthorized facilities.

751—16.4(8D) Connection between authorized users. An authorized user may use a direct connection or dial-up access to another authorized user's site to access the Internet or its successors through the fiberoptic network.

751—16.5(8D) Remote dial-up access for persons acting on behalf of an authorized user. An authorized user may grant Internet access to a person acting on its behalf from an unauthorized facility using remote dial-up access upon the following conditions:

1. The authorized user must order the Internet connection and provide a password to the person acting on behalf of the authorized user; and
2. The authorized user must be permitted by the Iowa Code and these rules to use remote dial-up access to obtain Internet access from an unauthorized facility.
3. The use must be within and restricted to the written mission statement of the authorized user and must fall within the subject of a written contract between the authorized user and person accessing the services necessary to fulfill the agreement between the authorized user and person providing the service to the authorized user.
4. Failure to follow the provisions of this rule will subject an authorized user to the provisions of 751—Chapter 10.

751—16.6(8D) Remote access from an unauthorized facility. Dial-up access to the Internet or its successors through the fiberoptic network shall not be permitted from a remote unauthorized facility except as provided in this rule. When dial-up access is permitted by this rule, the authorized user will determine which of its employees, staff, board members, voluntary staff, faculty or students will have access to the Internet or its successors from a remote unauthorized facility. The following authorized users may have dial-up access to the Internet or its successors from a remote unauthorized facility only when used to accomplish the written mission of the authorized user or to conduct the official business of the authorized user as long as the commission offers Internet or its successors as part of its service:

1. Faculty, staff, administrators and students of institutions of higher education eligible to participate in the programs of the Iowa college student aid commission.
2. Faculty, staff, administrators and students of community colleges.
3. Faculty, staff, and administrators of accredited public and private K-12 schools including special purpose schools operated by the state or juvenile facilities operated by the state.
4. Staff members of area education agencies.
5. Members of the General Assembly.
6. State and federal employees.
7. Library employees, library board members and volunteer staff.
8. A homebound student enrolled in the school district and certified as a homebound student participating in programs through the student's school district.

These rules are intended to implement Iowa Code sections 8D.1, 8D.2, 8D.3 and 8D.13.

ARC 7541A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to rescind Chapter 401, "Special Registration Plates," and to adopt new Chapter 401, "Special Registration Plates," Iowa Administrative Code.

These rules provide for the issuance of the following types of special registration plates: amateur radio call letter, personalized, collegiate, Congressional Medal of Honor, firefighter, natural resources, persons with disabilities, exprisoner of war, national guard, Pearl Harbor, Purple Heart, U.S. armed forces retired, Silver or Bronze Star, Iowa heritage, education, love our kids, and motorcycle rider education. Sesquicentennial plates are no longer being issued.

These rules also provide a procedure for requesting the department to approve a new special registration plate with a processed emblem. Among other things, the statute requires the requester to provide evidence that there is sufficient interest in the plate to pay implementation costs. To implement this requirement, these rules require the submission of 500 special plate applications and fees.

These rules are intended to implement Iowa Code sections 321.34, 321.166 and 321L.1; 1996 Iowa Acts, chapter 1088; 1996 Iowa Acts, chapter 1152, sections 7 and 8; 1996 Iowa Acts, chapter 1219, sections 21 to 25; 1997 Iowa Acts, House File 688, section 3; 1997 Iowa Acts, House File 692,

TRANSPORTATION DEPARTMENT[761](cont'd)

section 1; 1997 Iowa Acts, House File 704, sections 8 to 10; and 1997 Iowa Acts, Senate File 5.

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 October 28, 1997.

A meeting to hear requested oral presentations is scheduled for Thursday, October 30, 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.

Proposed rule-making action:

Rescind **761—Chapter 401**, "Special Registration Plates," and insert in lieu thereof the following **new** chapter:

CHAPTER 401
SPECIAL REGISTRATION PLATES

761—401.1(321) Definition. "Special registration plates" means those registration plates issued under Iowa Code section 321.34 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code section 321.34, this chapter of rules, and other applicable provisions of law.

761—401.2(321) Application, issuance and renewal.

401.2(1) Original application. Unless otherwise specified, application for special registration plates shall be made to: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines. The issuance fee, if any, shall be submitted with the application.

401.2(2) Issuance.

a. Special registration plates shall be issued only to a person who is an owner or lessee of the vehicle and is entitled to the special registration plates.

b. Special registration plates shall not be issued unless the vehicle is currently registered and the registration plates previously issued are surrendered to the county treasurer. Special registration plates are void if they are not assigned to a vehicle within 90 days after the date the department orders them.

c. Special registration plates may be issued to the owner of a multipurpose vehicle or motor home if the owner is otherwise entitled thereto.

d. Special registration plates may be issued for leased vehicles pursuant to Iowa Code section 321.34. The lessee must provide a copy of the lease agreement when applying for the special plates.

401.2(3) Renewal. Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a "validation" fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee.

761—401.3 and **401.4** Reserved.

761—401.5(321) Amateur radio call letter plates.

401.5(1) Application. Application for amateur radio call letter plates shall be made to the county treasurer on Form 411113. The amateur radio license issued by the Federal Communications Commission shall be shown to the county treasurer at the time of application.

401.5(2) Issuance. If an individual to whom amateur radio call letter plates have been issued is a joint owner of a vehicle other than the vehicle to which the plates are assigned, and the other owner also holds an amateur radio license, the other owner may apply for amateur radio call letter plates for the other vehicle. However, only one set of amateur radio call letter plates shall be issued to each amateur radio licensee.

761—401.6(321) Personalized plates.

401.6(1) Application. Application for personalized plates shall be made on Form 411065. The issuance fee is $25.

401.6(2) Characters. The personalized plates shall consist of no less than two nor more than seven characters except that personalized plates for motorcycles and small trailers shall consist of no less than two nor more than six characters.

a. The characters "A" to "Z" and "1" to "9" may be used. Zeroes shall not be used.

b. The personalized plates shall not duplicate combinations of characters reserved or issued for any other vehicle plate series under Iowa Code chapter 321.

c. No combination of characters denoting a governmental agency shall be issued.

d. No combination of characters shall be issued which is sexual in connotation; defined in dictionaries as a term of vulgarity, contempt, prejudice, hostility, insult, or racial or ethnic degradation; recognized as a swear word; considered to be offensive; or a foreign word falling into any of these categories.

401.6(3) Renewal. A validation fee of $5 shall be paid each year. If renewal is delinquent for more than one month:

a. A new application and $25 issuance fee are required, even if the same combination of characters is still available.

b. The department may issue the plates' combination of characters to another applicant.

401.6(4) Reassignment. A vehicle owner who has personalized plates assigned to a currently registered vehicle may assign the plates to another owner of a currently registered vehicle. A written request for reassignment shall be signed by both vehicle owners and submitted to the county treasurer of the assignor's county of residence. The personalized plates and a registration receipt shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates and registration receipt previously issued.

401.6(5) Gift certificate. A gift certificate for the issuance fee may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.7(321) Collegiate plates.

401.7(1) Application. Application for collegiate plates shall be made on Form 411065. The applicant may request

TRANSPORTATION DEPARTMENT[761](cont'd)

letter-number designated collegiate plates or personalized collegiate plates. The issuance fee is $50.

401.7(2) Characters. Personalized collegiate plates shall be issued in accordance with subrule 401.6(2) except that personalized collegiate plates are not available for motorcycles and small trailers.

401.7(3) Renewal. A validation fee of $5 shall be paid each year. If renewal is delinquent for more than one month:

a. A new application and $50 issuance fee are required.

b. The department may issue the combination of characters on personalized collegiate plates to another applicant.

401.7(4) Reassignment. A vehicle owner may request reassignment of personalized collegiate plates in accordance with subrule 401.6(4).

401.7(5) Gift certificate. A gift certificate for the issuance fee may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.8(321) Congressional Medal of Honor plates. Application for Congressional Medal of Honor plates shall be made on Form 411065. The applicant shall attach a copy of the official government document verifying receipt of the medal of honor.

761—401.9(321) Firefighter plates. Application for firefighter plates shall be made on Form 411065. The chief of the paid or volunteer fire department shall sign the back of the application form, certifying that the applicant is a current or former member of the fire department. If the chief cannot certify that the applicant is a former member, a person who has knowledge of the applicant's membership shall sign the application certifying that fact.

761—401.10(321) Natural resources plates—letter-number designated.

401.10(1) Application. Application for letter-number designated natural resources plates shall be made to the county treasurer. The issuance fee is a $35 special natural resources fee.

401.10(2) Renewal. The yearly validation fee is a $10 special natural resources fee. If renewal is delinquent for more than one month, a new application and $35 issuance fee are required.

401.10(3) Reassignment. A vehicle owner may request reassignment of letter-number designated natural resources plates in accordance with subrule 401.6(4).

401.10(4) Gift certificate. A gift certificate for the issuance fee may be purchased from the county treasurer. A gift certificate is void 90 days after issuance.

401.10(5) Distribution of fees. Special natural resources fees are paid to the Iowa resources enhancement and protection (REAP) fund.

761—401.11(321) Natural resources plates—personalized.

401.11(1) Application. Application for personalized natural resources plates shall be made on Form 411065. The issuance fee consists of a $35 special natural resources fee and a $45 personalized plate fee.

401.11(2) Characters. Personalized natural resources plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

401.11(3) Renewal. The yearly validation fee for personalized natural resources plates consists of a $10 special natural resources fee and $5 personalized plate fee. If renewal is delinquent for more than one month:

a. A new application and $80 issuance fee are required.

b. The department may issue the plates' combination of characters to another applicant.

401.11(4) Reassignment. A vehicle owner may request reassignment of personalized natural resources plates in accordance with subrule 401.6(4).

401.11(5) Gift certificate. A gift certificate for the issuance fee may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.12 to **401.14** Reserved.

761—401.15(321) Processed emblem application and approval process. Following is the application and approval process for special plate requests under Iowa Code subsection 321.34(13) as amended by 1997 Iowa Acts, House File 704, sections 9 and 10.

401.15(1) Application Form 411146 shall be used to submit a request to the department to recommend a new special registration plate with a processed emblem.

401.15(2) The application shall contain:

a. The applicant's name, address, and telephone number.

b. The name of the processed emblem.

c. A clear and concise explanation of the purpose of the special plate and all eligibility requirements.

d. The total number of the special plates the applicant anticipates being purchased.

401.15(3) The application shall be accompanied by:

a. A color copy of the processed emblem.

(1) The processed emblem shall be limited to 3" × 3½" on the registration plate, but the emblem submitted may be of a larger size.

(2) The processed emblem shall not have any sexual connotation, nor shall it be vulgar, prejudiced, hostile, insulting, or racially or ethnically degrading.

b. A certification by the person who has legal rights to the emblem allowing use of the emblem. This certification shall also include a statement holding the department harmless for using the processed emblem on a registration plate.

401.15(4) The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning the processed emblem.

401.15(5) Within 60 days after receiving the application, the office of vehicle services shall advise the applicant of the department's approval or denial of the application. The department reserves the right to approve or disapprove any processed emblem.

401.15(6) If the department approves the application, the applicant shall be advised that 500 paid special plate applications must be submitted to the department before the new plate will be manufactured and issued. If 500 paid applications are not submitted within one year after the date the department approved the plate, the department shall cancel its approval.

401.15(7) If the special plate is approved and at a later date it is determined that a false application was submitted, the department shall revoke the special plates. No refunds shall be paid.

761—401.16(321) Special plates with processed emblems—general.

TRANSPORTATION DEPARTMENT[761](cont'd)

401.16(1) Fees. Following are the fees for special plates with processed emblems:

	Letter-Number		Personalized	
Type	Issuance	Validation	Issuance	Validation
Persons With Disabilities	$0	$0	$25	$5
Ex-POW	$0	$0	N/A	N/A
National Guard	$25	$5	$50	$5
Pearl Harbor	$25	$5	$50	$5
Purple Heart	$25	$5	$50	$5
U.S. Armed Forces Retired	$25	$5	$50	$5
Silver or Bronze Star	$25	$5	$50	$5
Iowa Heritage	$35	$10	$60	$15
Education	$35	$10	$60	$15
Love Our Kids	$35	$10	$60	$15
Motorcycle Rider Education	$35	$10	$60	$15

401.16(2) Application. Unless specified otherwise, application for special plates with processed emblems shall be made on Form 411065.

401.16(3) Characters. Personalized special plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

401.16(4) Renewal. If renewal of either letter-number designated or personalized special plates with processed emblems is delinquent for more than one month:

a. A new application and issuance fee are required.

b. The department may issue the combination of characters on personalized processed emblem plates to another applicant.

401.16(5) Reserved.

401.16(6) Gift certificate. Unless otherwise specified, a gift certificate for special plates with processed emblems may be purchased by completing Form 411065 and submitting it to the department. Proof of eligibility for the special plates may be required. A gift certificate is void 90 days after issuance.

761—401.17 to 401.19 Reserved.

761—401.20(321) Persons with disabilities plates.

401.20(1) Application. Application for special plates with a persons with disabilities processed emblem shall be made on Form 411055 or Form 411065.

a. 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 certify that the owner or the owner's child is a person with a disability, as defined in Iowa Code section 321L.1, and that the disability is permanent.

b. If the person with a disability is a child, the parent or guardian shall complete the proof of residency certification on the application or complete and submit a separate proof of residency Form 411120, certifying that the child resides with the owner.

401.20(2) Definition.

"Child" includes, but is not limited to, stepchild, foster child, or legally adopted child who is younger than 18 years of age, or a dependent person 18 years of age or older who is unable to maintain the person's self.

401.20(3) Renewal. The owner shall, at renewal time, provide a self-certification stating that the owner or the owner's child is still a person with a disability and, if the person with a disability is the owner's child, that the child still resides with the owner.

761—401.21(321) Ex-prisoner of war plates. Application for special plates with an ex-prisoner of war processed emblem shall be made on Form 411065. The application shall include a copy of an official government document verifying that the applicant was a prisoner of war. If the document is not available, a person who has knowledge that the applicant was a prisoner of war shall sign a statement to that effect on the back of the application form.

761—401.22(321) National guard plates. Application for special plates with a national guard processed emblem shall be made on Form 411065. The unit commander of the applicant shall sign the back of the application form confirming that the applicant is a member of the Iowa national guard.

761—401.23(321) Pearl Harbor plates. Application for special plates with a Pearl Harbor processed emblem shall be made on Form 411065. The applicant shall submit a copy of an official government document verifying that the applicant was stationed at Pearl Harbor, Hawaii, as a member of the armed forces on December 7, 1941.

761—401.24(321) Purple Heart, Silver Star and Bronze Star plates. Application for special plates with a Purple Heart, Silver Star, or Bronze Star processed emblem shall be made on Form 411065. To verify receipt of the medal, the applicant shall include a copy of one of the following:

1. The official military order confirming the medal.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.25(321) U.S. armed forces retired plates. Application for special plates with a United States armed forces retired processed emblem shall be made on Form 411065. To verify retirement from the United States armed forces after service of 20 years or longer, the applicant shall include a copy of one of the following:

1. The official military order confirming retirement from the armed forces.
2. The report of discharge or federal Form DD214.
3. Other documentation approved by the Iowa office of the adjutant general.

761—401.26 Reserved.

761—401.27(321) Iowa heritage plates.

401.27(1) Application. Application for letter-number designated plates with an Iowa heritage processed emblem shall be made to the county treasurer. Application for personalized plates with an Iowa heritage processed emblem shall be made to the department on Form 411065.

401.27(2) Reassignment. A vehicle owner may request reassignment of letter-number designated or personalized Iowa heritage plates in accordance with subrule 401.6(4).

401.27(3) Gift certificate. A gift certificate for the issuance fee for letter-number designated Iowa heritage plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized Iowa heritage plates may be purchased by completing Form 411065 and

TRANSPORTATION DEPARTMENT[761](cont'd)

submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.28(321) Education plates.

401.28(1) Application. Application for letter-number designated special plates with an education processed emblem shall be made to the county treasurer. Application for personalized plates with an education processed emblem shall be made to the department on Form 411065.

401.28(2) Reassignment. A vehicle owner may request reassignment of letter-number designated or personalized education plates in accordance with subrule 401.6(4).

401.28(3) Gift certificate. A gift certificate for the issuance fee for letter-number designated education plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized education plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.29(321) Love our kids plates.

401.29(1) Application. Application for letter-number designated plates with a love our kids processed emblem shall be made to the county treasurer. Application for personalized plates with a love our kids processed emblem shall be made to the department on Form 411065.

401.29(2) Reassignment. A vehicle owner may request reassignment of letter-number designated or personalized love our kids plates in accordance with subrule 401.6(4).

401.29(3) Gift certificate. A gift certificate for the issuance fee for letter-number designated love our kids plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized love our kids plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.30(321) Motorcycle rider education plates.

401.30(1) Application. Application for letter-number designated plates with a motorcycle rider education processed emblem shall be made to the county treasurer. Application for personalized plates with a motorcycle rider education processed emblem shall be made to the department on Form 411065.

401.30(2) Reassignment. A vehicle owner may request reassignment of letter-number designated or personalized motorcycle rider education plates in accordance with subrule 401.6(4).

401.30(3) Gift certificate. A gift certificate for the issuance fee for letter-number designated motorcycle rider education plates may be purchased from the county treasurer. A gift certificate for the issuance fee for personalized motorcycle rider education plates may be purchased by completing Form 411065 and submitting it to the department. A gift certificate is void 90 days after issuance.

761—401.31 to **401.34** Reserved.

761—401.35(321) Additional information.

401.35(1) Surrender of special registration plates assigned to a vehicle.

a. When ownership of a vehicle is transferred or assigned to another person, the owner must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued.

b. When the lease for a vehicle is terminated, the lessee must surrender the special registration plates to the county treasurer or assign the plates to another vehicle owned or leased by the person to whom issued. Regular registration plates shall be reissued at no charge. Fees for issuing Congressional Medal of Honor plates shall be prorated for the remainder of the registration year.

401.35(2) Revocation of special registration plates. Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing their issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

401.35(3) Refund of fees. No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

These rules are intended to implement Iowa Code sections 321.34, 321.166 and 321L.1 and 1997 Iowa Acts, House File 688, section 3, House File 692, section 1, House File 704, sections 8 to 10, and Senate File 5.

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:

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%
September 1, 1997 — September 30, 1997	8.25%
October 1, 1997 — October 31, 1997	8.25%

ARC 7586A

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, 476.3, and 476.102 and the Telecommunications Act of 1996, 47 U.S.C. Section 254, the Utilities Board (Board) gives notice that on September 19, 1997, the Board issued an order in Docket No. RMU-97-8, In re: Universal Service—Low Income Assistance, "Order Commencing Rule Making," to consider amendments to 199 IAC 22.4(2), 22.4(3), 22.4(7), rescinding rules 22.18(476) and 38.8(476), and adding definitions to rule 39.1(476) and new rules 39.3(476) and 39.4(476) to the recently adopted chapter on universal service.

UTILITIES DIVISION[199](cont'd)

On May 7, 1997, the Federal Communications Commission (FCC) adopted low income rules as part of its Universal Service Report and Order in CC-96-45. The purpose of this rule making is to revise Board rules regarding the federal Link-up program for low-income subscribers consistent with the recently adopted FCC rules. Also, the rules initiate the federal Lifeline program for low-income subscribers in Iowa. In addition to the changes to reflect FCC rules, the rule making will address several items in existing Board rules that appear to impact universal service in this state.

The Board is proposing to amend subrule 22.4(2) regarding customer deposits. The amendment would no longer allow a deposit for deregulated toll to be a condition for local service. The premise underlying this amendment is that a primary goal of universal service is to have as many homes and businesses as possible subscribe to telephone service. A deposit requirement covering deregulated services is contrary to that goal. In addition, the provisions relating to deposit confirmations to customers and deposit amounts are modified to reflect the limitations in the new rules as to low-income customers.

The FCC's Universal Service rules indicate utilities may not disconnect low-income subscribers for failure to pay for toll charges. The Board's current rules do not allow companies to disconnect for failure to pay for information services, which are not regulated services. The Board believes deregulated toll services should be treated in the same way. Obtaining local service should not be contingent on being current in payments for deregulated toll service. Subrules 22.4(3) and 22.4(7) will be amended to prohibit disconnection for nonpayment of deregulated toll charges and will pertain to all customers, not just low-income customers.

The Board's current rule 22.18(476) regarding the federal low-income connection assistance program, known as Link-up, will be rescinded and will appear in revised form in new rule 39.3(476). Rule 39.3(476) also will contain provisions introducing the federal Lifeline program. The Board also is proposing to amend 199 IAC 39.1(476) by adding definitions of toll blocking, toll control, and toll limitation.

Chapter 39 has been designated as the universal service chapter. For that reason, rule 38.8(476), which deals with universal service support for schools and libraries, will be rescinded and transferred, without substantive change, to become new rule 39.4(476).

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position on the proposed amendments no later than October 28, 1997, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, Lucas State Office Building, Des Moines, Iowa 50319.

An oral presentation is scheduled for November 4, 1997, at 10 a.m. in the Utilities Board's First Floor Hearing Room, Lucas State Office Building, Des Moines, Iowa. Pursuant to 199 IAC 3.7(17A,474), all interested persons may participate in this proceeding. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments implement federal low-income assistance programs that begin to provide support on January 1, 1998. In order for Iowa telephone companies and low-income customers to participate fully in the programs, the amendments must be effective on that date. For that reason, the Board intends to make the amendment effective on January 1, 1998, even though that date is less than 35 days after filing, indexing and publication. This is permitted under Iowa Code section 17A.5(2)"b" because the amendments confer a benefit on the public or some segment thereof.

These amendments are intended to implement Iowa Code section 476.102 and the Telecommunications Act of 1996, 47 U.S.C. Section 254.

The following amendments are proposed.

ITEM 1. Amend subrule 22.4(2), introductory paragraph and paragraph "a," as follows:

22.4(2) Customer deposits. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff. The deposit required shall be confirmed in writing to the customer not later than the time of the next billing. The confirmation shall, in separate columns, itemize deposits for toll and regulated services and identify deposits for other services. The confirmation shall state that no deposit other than for ~~toll and~~ regulated services is required to obtain basic local service. *The confirmation must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4).* Toll service does not include information service not regulated by the board.

a. Such deposit shall not be more in amount than the maximum charge for two months local exchange service plus two months *regulated* toll service estimated from either past toll usage or customer estimated anticipated usage or exchange average toll usage for the same class and grade of service, or as may reasonably be required by the utility in cases involving service for short periods of time or special occasions. *The deposit amounts must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4).*

ITEM 2. Amend subparagraph **22.4(3)"c"(4)** as follows:

(4) Each disconnection notice shall state that access to regulated service shall not be denied for failure to pay for information service charges, *or for deregulated toll charges.*

ITEM 3. Amend paragraph **22.4(3)"e"** as follows:

e. If the customer makes a partial payment in a timely manner, and does not designate the service or product for which payment is made, the payment shall first be applied to the undisputed balance for basic local service, with the remainder applied on a pro-rata basis to regulated utility services ~~and toll~~. If an amount remains, it may then be applied to deregulated and nonregulated services ~~other than toll~~. The late payment charge provision should be applied to only the outstanding balance for utility services, except interstate toll and related taxes.

ITEM 4. Amend subrule **22.4(7)** by adding **new** paragraph **"i"** as follows:

i. Failure to pay deregulated toll charges.

ITEM 5. Rescind and reserve rule **199—22.18(476)**.

ITEM 6. Rescind and reserve rule **199—38.8(476)**.

ITEM 7. Amend rule **199—39.1(476)** by adding the following **new** definitions in alphabetical order:

UTILITIES DIVISION[199](cont'd)

"Toll blocking" means a service that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

"Toll control" means a service that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

"Toll limitation" denotes both toll blocking and toll control.

ITEM 8. Adopt the following new rules:

199—39.3(476) Low-income connection assistance program (Link-up) and low-income Lifeline assistance.

39.3(1) Filing of tariffs or inclusion of offer in contracts.

a. Eligible telecommunications carriers that file tariffs with the board shall include in their tariffs provisions offering low-income connection assistance (Link-up) and low-income Lifeline assistance rates to qualified applicants for single-party service, voice grade access to the public switched network, DTMF (Dual Tone Multi-Frequency) or its functional digital equivalent, access to emergency services, access to operator services, access to interexchange service, and access to directory assistance. In addition, toll limitation shall be included in this service offering without charge to the Lifeline customer.

b. Eligible carriers that do not file tariffs with the board shall include the Link-up and Lifeline offerings in their agreements to provide service to customers.

39.3(2) Rates.

a. Link-up connection assistance rates. The reduced rates shall include all state tariffed connection charges for installing basic residential service except security deposits. The eligible carrier shall offer to qualified applicants either or both of the following:

(1) A reduction of 50 percent of all connection charges or $30, whichever is less, and

(2) A deferred payment schedule of equal payments of the charges of up to $200 assessed for commencing service. The consumer does not pay interest on the deferred charges. The deferral period shall not exceed one year.

(3) The consumer shall receive the benefit of the Link-up program for a second or subsequent time only for a principal place of residence with an address different from the residence address at which Link-up assistance was provided previously.

b. Lifeline assistance rates. The rates charged to qualified applicants shall reflect the following:

(1) Eligible carriers that charge federal end-user common line charges or equivalent federal charges must apply the federal baseline Lifeline support of $3.50 to waive the Lifeline consumers' federal end-user common line charges.

(2) Eligible carriers that do not charge federal end-user common line charges or equivalent federal charges must apply the federal baseline Lifeline support amount of $3.50 to reduce the Lifeline consumer's lowest tariffed residential rate.

(3) Qualified applicants shall have their monthly local exchange service rate reduced by the federal support of $1.75, in addition to the $3.50 of baseline federal support used either to waive the Lifeline customer's federal end-user common line charges, or to reduce the Lifeline customer's residential rate.

(4) Eligible carriers may not collect a service deposit in order to initiate Lifeline service, if the qualified applicant voluntarily elects toll blocking where available.

39.3(3) Qualified applicants. To be eligible for Lifeline or Link-up assistance, an applicant must participate in one of the following programs:

a. Medicaid (e.g., Title XIX/Medical, state supplemental assistance);

b. Food stamps;

c. Supplemental Security Income;

d. Federal public housing assistance; and

e. Low-income Home Energy Assistance Program.

39.3(4) Application. The application shall be upon a form as set forth below. The form shall be supplied to the applicant by the eligible carrier.

LINK-UP AND LIFELINE RATE ASSISTANCE APPLICATION

Name_____

Address_____

Soc. Sec._____

City State Zip

Phone Number where you may be reached or receive messages (__)_____

Please answer the following questions (indicate by check mark):

1. By filling out this application I (the applicant) request:

___low-income telephone connection assistance (Link-up) and/or

___low-income telephone Lifeline assistance.

2. Have you received Link-up assistance at the above address in the past?

___ Yes

___ No

If the answer is "yes," you are not eligible for Link-up assistance.

3. Are you participating in any of the following programs:

___ Medicaid (e.g., Title XIX/Medical, State Supplemental Assistance)

___ Food Stamps

___ Supplemental Security Income

___ Federal Public Housing Assistance

___ Low-Income Home Energy Assistance

I understand completion of this application does not constitute immediate acceptance into this program. I agree to notify the telecommunications carrier if I cease to participate in any of the public assistance programs I checked above.

I certify under penalty of perjury the above information is true. I have read the information on this application and understand I must meet the above qualifications to receive assistance from these programs.

SIGNATURE_____DATE_____

39.3(5) Data collection. Eligible carriers shall keep records of the number of subscribers receiving Link-up and Lifeline assistance. Each eligible carrier must keep accurate records of the revenues it forgoes in providing Lifeline and Link-up. The board requires that the carrier file information with the federal administrator demonstrating the carrier's Lifeline and Link-up plans meet the federal criteria, the number of qualifying low-income consumers, and stating there are no state contributions.

39.3(6) Customer notification.

a. Eligible carriers shall inform all persons ordering new or transferring existing residential service of the Link-up and Lifeline assistance programs and shall inquire whether the customer wants to have further information concerning the programs provided, unless it is apparent that the customer would not be eligible.

b. The eligible carrier shall provide informational brochures and application forms to the county offices of the Iowa department of human services, division of community services for the counties served, to the area agency on aging, and to the community action offices of the department of hu-

UTILITIES DIVISION[199](cont'd)

man rights for the region served. In counties or regions served by more than one eligible carrier, the carriers are encouraged to cooperate in providing the brochures and forms jointly.

c. The eligible carriers shall pursue media coverage of the Link-up and Lifeline assistance programs. This may include advertising where appropriate.

199—39.4(476) Universal service support for schools and libraries. With respect to intrastate telecommunication services, determined by either the board or the Federal Communications Commission to be within the definition of universal service, the discount for elementary schools, secondary schools, and libraries shall be equal to the discount the Federal Communications Commission sets with respect to interstate service.

ARC 7593A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts Chapter 42, "Governmental Enterprise Fund," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7436A** on August 13, 1997. The IDED Board adopted the amendments on September 18, 1997.

The new rules will 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."

A public hearing was held on September 2, 1997. No comments concerning the proposed rules were received from the public. The final rules are identical to those published under Notice of Intended Action.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on September 19, 1997. These rules confer a benefit on the public by permitting cities and counties to move forward with existing projects and strategies.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the final rules in the Iowa Administrative Bulletin, providing free copies upon request, and having copies available wherever requests for information about the program are likely to be made.

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

These rules became effective on September 19, 1997.

The following new chapter is adopted.

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:

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."

[Filed Emergency After Notice 9/19/97, effective 9/19/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7589A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts Chapter 59, "Enterprise Zones," Iowa Administrative Code.

Notice of Intended Action was published as ARC 7356A in the July 16, 1997, Iowa Administrative Bulletin. The Board adopted the new chapter on September 18, 1997. The Adopted and Filed Emergency rules published as ARC 7357A on July 16, 1997, in the Iowa Administrative Bulletin are hereby rescinded on September 19, 1997.

The new chapter describes how a city or county may request enterprise zone certification by the Department, establishes eligibility requirements for businesses seeking to participate in the enterprise zone, describes application and evaluation procedures, and outlines the requirements for the creation of local Enterprise Zone Commissions.

A public hearing was held on August 5, 1997, to receive comments about the proposed rules. As a result of these comments, the following changes were made to the proposed rules:

1. Paragraph 59.3(2)"b" was amended to clarify that a geographic unit located in a contiguous city may be included in an enterprise zone provided the geographic unit would otherwise independently meet the eligibility criteria.

2. Subparagraph 59.3(3)"a"(2) was amended to include a requirement that a map showing the boundaries of the enterprise zone accompany the designation request.

3. Subparagraph 59.3(3)"a"(4) was revised to clarify that a resolution must include a schedule of the value-added property tax exemption that will be offered within the enterprise zone. This schedule may be included with the resolution requesting the zone designation, but must be approved by resolution before the establishment of the local Enterprise Zone Commission. Additional clarification was also provided in this section concerning how other property tax exemptions and tax incentives may be used in the enterprise zone.

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

4. A new paragraph "e" was added to subrule 59.4(3) to ensure that commissions are aware that they have statutory authority to adopt additional local eligibility requirements for businesses.

5. Paragraph 59.5(1)"d" was amended to be consistent with the policies of other IDED financial assistance programs which have a $9.50 eligibility "cap." If a business pays an hourly wage of $9.50 or greater, it will be considered eligible for participation in the program. However, a local enterprise zone commission may establish higher wage thresholds if it desires to do so.

6. Subrule 59.6(1) was revised to clarify that local enterprise zone commissions may adopt additional eligibility requirements related to compensation and benefits as well as requirements that give preference in hiring individuals who reside in the zone.

7. Paragraph 59.8(1)"a" was amended to clarify that additional new jobs created by the project, beyond the number pledged, are eligible for the additional 1½ percent withholding credit. Also, a sentence was added to the end of the paragraph which describes business eligibility requirements under Iowa Code chapter 260E.

8. Paragraph 59.8(1)"b" was amended to clarify that if a city or county offers a value-added property tax exemption, the same level of exemption must be offered to all companies within the enterprise zone. The Department received comments from the City of Des Moines concerning this issue. The City of Des Moines' position is that the amount of property tax exemption does not have to be the same throughout an enterprise zone; that separate exemption schedules could be negotiated for each business within the enterprise zone. The Department consulted with the Department of Revenue and Finance (DRF) about this topic. DRF directed the Department to an Opinion of the Attorney General (Griger to Murray, #80-3-19) which DRF believes is analogous to this situation. The final rule requires that the same value-added property tax exemption be offered to all businesses locating within an enterprise zone to be consistent with the referenced opinion of the Attorney General.

9. Paragraph 59.8(1)"c" was revised to clarify questions the Department received about the investment tax credit. The last sentence in the proposed rules which would have required Enterprise Zone Commissions to estimate the value of the property tax exemption was not adopted in the final rules.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the rules, 35 days after publication, should be waived and the rules be made effective on September 19, 1997. These rules confer a benefit on the public by permitting cities and counties to work with businesses that have eligible projects.

The agency is taking the following steps to notify potentially affected parties of the effective date of the rules: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

These rules became effective on September 19, 1997.

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

The following **new** chapter is adopted.

CHAPTER 59
ENTERPRISE ZONES

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

261—59.2(15E) Definitions.

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

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

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

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

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

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

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

"Department" means the Iowa department of economic development.

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

"DRF" means the Iowa department of revenue and finance.

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

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

261—59.3(15E) Enterprise zone certification. An eligible county or a city may request the board to certify an area meet-

ing the requirements of the Act and these rules as an enterprise zone. Zone designations will remain in effect for a period of ten years from the date of the board's certification as a zone. A county or city may request zone designation at any time prior to July 1, 2000.

59.3(1) County—eligibility.

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

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

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

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

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

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

59.3(2) City—eligibility.

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

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

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

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

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

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

b. Population limits. A city with a population of 24,000 or more, as shown by the 1990 certified federal census, may request enterprise zone certification by the board. The zone shall consist of one or more contiguous census tracts, as determined in the most recent federal census, or alternative geographic units approved by the department, for that purpose. In creating an enterprise zone, an eligible city may designate as part of the area tracts or approved geographic units located in a contiguous city if such tracts or approved geographic units otherwise meet the criteria on their own and the contiguous city agrees to be included in the enterprise zone.

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

59.3(3) Designation procedures.

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

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

(2) A legal description of the proposed enterprise zone area and a detailed map showing the boundaries of the proposed enterprise zone.

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

(4) Resolution of the city council or board of supervisors, as appropriate, requesting designation of the enterprise zone(s). Included within this resolution may be a statement of the schedule of value-added property tax exemptions that will be offered to all eligible businesses that may locate or expand within the proposed enterprise zone. This schedule of value-added property tax exemptions may be approved at the time of zone designation request, but must be approved by the city council or board of supervisors, as appropriate, before the establishment of the local enterprise zone commission. This schedule of value-added property tax exemptions may also include the other property tax exemptions or other property tax related incentives that may be used in conjunction with the enterprise zone such as property tax exemptions that may exist in Urban Revitalization Areas or Tax Increment Financing (TIF) districts that may exist within Urban Renewal Areas. Property tax exemptions authorized under Iowa Code chapter 427B may not be used, as stated in Iowa Code section 427B.6, in conjunction with property tax exemptions authorized by city council or county board of supervisors within the local enterprise zone. The city or county shall forward a copy of the official resolution listing the property tax exemption schedule(s) to the department and to the local assessor.

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

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

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

261—59.4(15E) Enterprise zone commission. Following notice of enterprise zone certification by the board, the applicant city or county shall establish an enterprise zone commission. The commission shall review applications from busi-

nesses located in the zone and forward eligible applications to the department for approval.

59.4(1) Commission composition.

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

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

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

(3) One representative of the county zoning board,

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

(5) One representative of the local workforce development center selected by the Iowa workforce development department unless otherwise designated by a regional advisory board.

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

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

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

a. The name and address of each member.

b. An identification of what group the member is representing on the commission.

c. Copies of the resolution or other necessary action of a governing body, as appropriate, by which a member was appointed to the commission.

d. Any other information that the department may reasonably request in order to permit it to determine the validity of the commission's composition.

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

a. Processes for receiving and evaluating applications from qualified businesses seeking to participate within the enterprise zone; and

b. Operational policies of the commission such as meetings; and

c. A process for the selection of commission officers and the filling of vacancies on the commission; and

d. The designation of staff to handle the day-to-day administration of commission activities.

e. Additional local eligibility requirements for businesses, if any, as discussed in subrule 59.6(1).

261—59.5(15E) Eligible business.

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

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

b. The business is not a retail business.

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

d. The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business shall not be less than $7.50 per hour. The department will periodically calculate, revise and issue the "average county wage" and the "average regional wage" figures that will be used for determining business eligibility in the program. However, in any circumstance a company will be deemed eligible for participation in the enterprise zone if it pays an hourly wage of $9.50 or greater. The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires. These wage levels shall be met as each job is created at the business location.

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

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

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

a. The long-term strategic plan for the business, which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other Iowa businesses in competition with it.

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

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

59.6(1) Additional commission eligibility requirements. Under the Act, a commission is authorized to adopt additional eligibility requirements related to compensation and benefits that businesses within a zone must meet in order to qualify for benefits. Additional local requirements that may be considered could include, but are not limited to, the types of industries or businesses the commission wishes to receive enterprise zone benefits; requirements that preference in hiring be given to individuals who live within the enterprise zone; higher wage eligibility threshold requirements than would otherwise be required; higher job creation eligibility threshold requirements than would otherwise be required; the level of benefits required; local competition issues; or any other criteria the commission deems appropriate. If a commission elects to adopt more stringent requirements than those contained in the Act and these rules for a business to be eligible for incentives and assistance, these requirements shall be submitted to the department.

59.6(2) Application. The department will develop a standardized application that it will make available for use by businesses within a certified enterprise zone. The commission may add any additional information to the application that it deems appropriate. If the commission determines that a business qualifies for inclusion in an enterprise zone and that it is eligible for benefits under the Act, the commission shall submit an application for incentives or assistance to the department.

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

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

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

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

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

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

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

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

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

a. New jobs supplemental credit. As provided in Iowa Code section 15.331, a supplemental new jobs credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.9(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but excludes retail, health or professional services.

b. Value-added property tax exemption.

(1) The county or city for which an eligible enterprise zone is certified may exempt from all property taxation all or a portion of the value added to the property upon which an eligible business locates or expands in an enterprise zone and which is used in the operation of the eligible business. This exemption shall be authorized by the city or county that would have been entitled to receive the property taxes, but is electing to forego the tax revenue for an eligible business under this program. The amount of value added for purposes of Iowa Code section 15E.186 shall be the amount of the increase in assessed valuation of the property following the location or expansion of the business in the enterprise zone.

(2) To be consistent with the Opinion of the Attorney General, Griger to Murray, #80-3-19, the value-added property tax exemption offered, if any, to the company must be the same schedule of property tax exemptions that is offered to all eligible businesses that locate or expand in the enterprise zone.

(3) The exemption may be allowed for a period not to exceed ten years beginning the year the eligible business enters into an agreement with the county or city to locate or expand operations in an enterprise zone.

c. Investment tax credit. A business may claim an investment tax credit as provided in Iowa Code section 15.333. A corporate tax credit may be claimed of up to a maximum of 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the business in the enterprise zone. If the business is a partnership, subchapter S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the tax credit allowed. Any credit in excess of tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs first. The business participating in the enterprise zone may not claim an investment tax credit for capital expenditures above the amount stated in the agreement described in 261—59.9(15E). An eligible business may instead seek to amend the contract, allowing the business to receive an investment tax credit for additional capital expenditures, or may elect to submit a new application within the enterprise zone. For purposes of this rule, the capital expenditures eligible for the investment tax credit under the enterprise zone program are the costs of machinery and equipment used in the operation of the eligible business and the cost of improvements to real property which is used in the operation of the business and which receives a partial property tax exemption for the value added as described in Iowa Code section 15.332.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Filed Emergency After Notice 9/19/97, effective 9/19/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7588A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 68, "Iowa Export Trade Assistance Program," Iowa Administrative Code.

The amendments were published in the Iowa Administrative Bulletin as **ARC 7434A** on August 13, 1997. The Board adopted the amendments on September 18, 1997.

Companies may access the ETAP program three times per year. However, existing program rules prohibited companies from seeking assistance under this program for more than two trade shows during a state fiscal year. This amendment eliminates the two trade show restriction, but retains 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. These amendments also update the Iowa Code reference of the program's implementation statute.

A public hearing was held on September 2, 1997. No comments were received at the public hearing. These amendments are identical to the proposed amendments.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the amendments, 35 days after publication, should be waived and the amendments be made effective on September 19, 1997. These amendments confer a benefit on the public by removing a restriction on the use of program funds.

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

The following amendments are adopted.

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."*

[Filed Emergency After Notice 9/19/97, effective 9/19/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7546A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 217.6, 1997 Iowa Acts, Senate File 516, section 5, subsection 3, and

HUMAN SERVICES DEPARTMENT[441](cont'd)

House File 715, section 3, subsection 3, paragraph "f," subparagraph (1), and section 37, the Department of Human Services hereby amends Chapter 7, "Appeals and Hearings," Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code, and adopts Chapter 47, "Pilot Diversion and Self-Sufficiency Grants Programs," Iowa Administrative Code.

These amendments define and structure the Department of Human Services Pilot Diversion and Self-Sufficiency Grants Programs. The purpose of these pilot programs is to determine the potential benefits and cost savings of providing immediate, short-term assistance to families in lieu of ongoing assistance under the Family Investment Program (FIP) (diversion), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (self-sufficiency grants). Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment.

Objectives of the pilot programs include:

- Linking welfare participants and potential welfare recipients with employment;
- Avoiding FIP dependency or reducing the time of dependence on FIP;
- Developing, demonstrating and evaluating specialized local strategies;
- Determining cost-effectiveness of diversion or self-sufficiency assistance.

Participation in either program shall be based on a voluntary, informed decision by the family. There is no entitlement to participation in either pilot program. The scope of these pilot programs is limited to avoiding or reducing dependency on cash assistance. These pilot programs are not intended to divert families from applying for or receiving other assistance programs provided by the department including child care, food stamps or Medicaid. Families may receive those benefits if otherwise eligible. Further, candidates for the pilot programs shall not be denied FIP or have FIP benefits reduced or canceled on the basis that they do not want to participate in the pilot program.

These pilot programs are based on recommendations made by the Welfare Reform Advisory Group to the Department. The Advisory Group was convened in 1996 to meet a legislative mandate for establishing an interagency task force to provide input to the Department concerning FIP and welfare reform.

Following the recommendations of the Advisory Group, the Seventy-seventh General Assembly authorized and funded a pilot program to divert potential FIP applicants and assist FIP participants in overcoming barriers to employment. Incentives may be provided in the form of payment or services. A subaccount in the amount of $500,000 was allocated within the FIP account for the pilot program. Funding for the pilot program was made possible by the elimination of the Work Transition Period (WTP). WTP exempted earnings from new jobs for the first four months of employment.

Of the $500,000 allocated, the Department has decided to use $100,000 for the Pilot Diversion Program and $400,000 for the Self-Sufficiency Grants Pilot Program. As WTP actually benefited FIP recipients and the pilot programs are funded from former WTP funds, more was allocated to Self-Sufficiency Grants than Diversion. Both are still employment-related and are intended to achieve the same basic goal as WTP, encouraging work over FIP.

These pilot programs give local projects flexibility to better meet family needs. These rules are intended to provide general parameters rather than be prescriptive. This allows county offices the opportunity and flexibility to be more innovative in developing programs designed to more effectively meet local needs and conditions. Flexibility allows for simultaneously trying a broader range of procedures and techniques across pilot sites, as opposed to a single, prescribed methodology, which will better enable the Department to identify and refine best practices that could be incorporated into any continuation or expansion of the programs. County offices will have correspondingly increased responsibility and accountability in administering these programs.

Local pilot projects shall be implemented no earlier than October 1, 1997, and, subject to funding, shall operate until June 30, 1998. Continuation and expansion of the pilot programs shall depend on subsequent legislation. The Department is required to make a report to the legislature by January 15, 1998, on the potential benefits of continuing or expanding the programs. These pilot programs will be limited in scope, affecting a small percentage of the FIP caseload. Results of the pilot programs will be used to determine whether the concept has the potential for a significant positive impact if expanded.

Pilot Diversion Program

The Pilot Diversion Program provides a voluntary alternative to ongoing cash assistance to families from FIP as provided under 441—Chapters 40, 41, and 42. The purpose of the Pilot Diversion Program is to provide immediate, short-term assistance to a family, in lieu of ongoing FIP cash assistance. For example, diversion assistance can be used for a car repair so a family member can get to an existing job, and remain self-sufficient. Assistance under this program may postpone or prevent the need to apply for FIP.

The Pilot Diversion Program shall consist of local pilot projects. Only county department offices were eligible to apply for pilot diversion funding and administer pilot projects; however, the county office may work in conjunction with other local resources. Proposals requesting a total of $219,320 were received from the following counties: Cass, Johnson, Linn, Pottawattamie, Story, and Woodbury. A panel of FIP, Food Stamp, Medicaid, services, data management, child support, workforce development and county general relief representatives reviewed the proposals for completeness and feasibility, and made recommendations to fund those that best met the overall objectives of the pilot. Initial pilot projects shall be implemented in the following counties at these amounts:

- Cass $20,000
- Pottawattamie $40,000
- Woodbury $40,000

Up to three additional pilot projects may be implemented during the program's duration if additional funding becomes available.

Self-Sufficiency Grants Program

Pilot Family Self-Sufficiency Grants Program

The Pilot Family Self-Sufficiency Grants Program is available statewide for payment to families or on behalf of specific families. The family self-sufficiency grants are part of the PROMISE JOBS program. Funding is allocated to each of the 15 PROMISE JOBS service delivery regions, based on a formula that uses the number of FIP cases in the region.

Family self-sufficiency grants shall be authorized for removing an identified barrier to self-sufficiency for a family when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of authorization of payment. The grants are not to dupli-

cate assistance available under regular PROMISE JOBS policies but are to address barriers to self-sufficiency by meeting expenses that are not approvable under regular PROMISE JOBS policies.

Pilot Community Self-Sufficiency Grants Programs

County Department offices and local PROMISE JOBS service delivery regions must apply jointly to receive a community self-sufficiency grant. Either entity can administer the pilot project; however, the Department and PROMISE JOBS are encouraged to work in conjunction with other local resources. Requests for applications were sent to the county and PROMISE JOBS offices on August 13, 1997. The deadline for submitting applications was September 26, 1996. The decision on the final number of project sites to be funded will be announced on October 20, 1997.

Community self-sufficiency grants shall establish pilot projects to identify and remove systemic or community barriers to self-sufficiency, helping multiple PROMISE JOBS participant families to obtain or retain employment. This pilot program gives local projects flexibility to better address systemic or community barriers to self-sufficiency for FIP participants such as, but not limited to, communitywide or community-specific transportation needs, unusual child care needs not addressed by existing child care programs such as sick-bay child care or shift child care, parent or other relative care needs, language barrier programs, meeting special employer needs, prework skills training that is not available through PROMISE JOBS, economic development-related community needs, or community needs for work-based learning projects.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 1997 Iowa Acts, House File 715, section 3, subsection 3, paragraph "f," subparagraph (1), and section 37, which authorize the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective October 1, 1997, as authorized by 1997 Iowa Acts, House File 715, section 3, subsection 3, paragraph "f," subparagraph (1), and section 37.

These amendments are also published herein under Notice of Intended Action as **ARC 7545A** to allow for public comment.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments are intended to implement 1997 Iowa Acts, Senate File 516, section 12, subsection 2, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1).

These amendments became effective October 1, 1997.

The following amendments are adopted.

ITEM 1. Amend subrule **7.5(2)** by adding the following **new** paragraph **"f."**

f. The sole basis for denying, terminating or limiting assistance under 441—Chapter 47, Division I, II or III, or 441—Chapter 58 is that funds for the respective programs have been reduced, exhausted, eliminated or otherwise encumbered.

ITEM 2. Amend rule 441—41.25(239) by adding the following **new** subrule 41.25(9).

41.25(9) Pilot diversion program. Assistance shall not be approved when an assistance unit is subject to the period of ineligibility as described at 441—subrule 47.5(3).

ITEM 3. Amend subrule **41.27(7)** by adding the following **new** paragraph **"ai."**

ai. Diversion or self-sufficiency grants assistance as described at 441—Chapter 47.

ITEM 4. Adopt the following **new** chapter:

CHAPTER 47
PILOT DIVERSION AND SELF-SUFFICIENCY GRANTS PROGRAMS

PREAMBLE

This chapter describes the department of human services pilot diversion and self-sufficiency grants programs. The purpose of these pilot programs is to determine the potential benefits and cost savings of providing immediate, short-term assistance to families in lieu of ongoing assistance under the family investment program (FIP) (diversion), or to meet needs of FIP participants not currently met by existing PROMISE JOBS services (self-sufficiency grants). Assistance under this chapter is intended to enable families to become or remain self-sufficient by removing barriers to obtaining or retaining employment.

DIVISION I
PILOT DIVERSION PROGRAM

PREAMBLE

The pilot diversion program provides a voluntary alternative to ongoing cash assistance to families through the family investment program (FIP) as provided under 441—Chapters 40, 41, and 42. The purpose of the pilot diversion program is to provide immediate, short-term assistance to a family, in lieu of ongoing FIP cash assistance. Assistance under this division may postpone or prevent the need to apply for FIP.

441—47.1(77GA,SF516) Definitions.

"Approved pilot project" means a pilot proposal meeting the conditions in the request for application that was reviewed, approved and funded by the division administrator. Each approved pilot project shall have a local plan as described at rule 441—47.6(77GA,SF516), approved by the division administrator. The project shall be limited to families in a specific geographic area detailed in the local plan.

"Candidate" means anyone expressing an interest in the pilot diversion program, or identified by a county office having an approved pilot project as likely to meet the criteria for participating in the project, and who is working with the county office to enroll in the program.

"Cash value" means diversion assistance having direct value to the participant, through cash payment, voucher, or vendor payment. Examples of assistance without direct cash value are mentoring and case management.

"County office" means the county office of the department of human services.

"Department" means the Iowa department of human services.

"Director" means the director of the department.

"Diversion assistance" means any type of assistance provided under this division as described in subrule 47.4(1).

"Division administrator" means the administrator of the division of economic assistance of the department, or the administrator's designee.

HUMAN SERVICES DEPARTMENT[441](cont'd)

"Family" means "assistance unit" as defined at rule 441—40.21(239).

"Family investment program" or "FIP" means the cash grant program provided by 441—Chapters 40, 41 and 42, designed to sustain Iowa families.

"Fiscal agent" means that entity provided funds under an agreement with a county office having an approved pilot project. The fiscal agent shall, at the direction of the county office, issue payments for assistance under this division and maintain accounting records as specified by the agreement.

"Human services area administrator (HSAA)" means the person responsible for delivery of income maintenance and social services programs for a county or multicounty area.

"Immediate, short-term assistance" means assistance provided under this division shall be authorized in less time than it would take to process and issue FIP under normal processing standards described at rule 441—40.25(239), and that it shall not occur on a regular or frequent basis. Participants may receive assistance under this division more than once under the duration of the pilot, but shall not receive assistance so often as to be considered receiving ongoing assistance as under FIP. Time frames and frequency of assistance shall be detailed in the local plan.

"Local plan" means the written policies and procedures, and other components for administering an approved pilot project as described at rule 441—47.6(77GA,SF516).

"Participant" means anyone receiving assistance under this division.

"Pilot proposal" means the project description submitted by the county office prepared within the parameters of a request for application issued by the division administrator. Pilot proposals shall be reviewed by a panel of FIP, food stamp, Medicaid, services, data management, child support, workforce development, and county general relief staff for completeness and feasibility of the project. The panel shall make recommendations for approval of pilot projects to the division administrator. The division administrator shall approve, modify and approve, or deny the proposal.

"Request for application" means a request issued by the division administrator to county offices for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

"Temporary assistance for needy families" or "TANF" means the program for granting benefits to eligible groups under Title IV-A of the federal Social Security Act as amended by Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. This replaced the aid to families with dependent children program.

"Written funding agreement" means that agreement between a county office having an approved pilot project and a fiscal agent. The agreement shall specify the amount of funds the fiscal agent will receive as well as the responsibilities of both parties. The written funding agreement shall be signed by authorized representatives of the department and the fiscal agent.

441—47.2(77GA,SF516) Availability of program. The pilot diversion program shall be available only in those counties or other specified areas of the state having an approved pilot project as defined at rule 441—47.1(77GA,SF516). Assistance shall be provided to those families determined to be likely candidates for success in a program, as determined by the local project staff.

441—47.3(77GA,SF516) General criteria. Pilot diversion program candidates shall be otherwise eligible for FIP, as set forth at subrule 47.5(1). Participation in the pilot diversion program is voluntary. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the immediate, short-term assistance offered by this division, and according to the local plan.

441—47.4(77GA,SF516) Assistance available. Diversion assistance shall assist participant families to obtain or retain employment. The means of providing the diversion assistance for each project shall be detailed in the local plans.

47.4(1) Types of assistance. Diversion assistance shall be granted through any or all of the following: cash payments, vendor payments, voucher payments, or support services. Specific types of assistance administered by each pilot shall be set forth in the local plans.

47.4(2) Maximum value of assistance. For assistance having a cash value to the family, each pilot shall establish a maximum amount each family may receive during the pilot period. Specific maximum values of assistance administered by each pilot shall be set forth in the local plans.

47.4(3) Frequency of assistance. Diversion assistance is intended to be of an immediate and short-term nature. While a family may be a candidate more than once, this program shall not be considered ongoing assistance. The frequency of assistance for each approved pilot project shall be set forth in the local plans.

47.4(4) Supplanting. Diversion funds shall not be used for services already available through local resources at no cost to the family or to the department.

441—47.5(77GA,SF516) Relationship to the family investment program and TANF.

47.5(1) Otherwise FIP eligible. Candidates for the diversion program must meet the following FIP eligibility criteria and any other FIP eligibility criteria found in 441—Chapter 41 included in the local plan of an approved pilot project:

a. Requirements related to a child's age, deprivation and living with specified relative as described at rules 441—41.21(239), 441—41.22(239) and 441—42.22(239).

b. Social security number requirements described at 441—subrule 41.22(13).

c. Residency requirements described at 441—subrule 41.23(1).

d. Citizenship and alien requirements described at 441—subrules 41.23(4) and 41.23(5).

e. Resource requirements described at rule 441—41.26(239), particularly the limits for FIP applicants described at 441—paragraph 41.26(1)"e."

f. Income requirements described at rule 441—41.27(239). Candidates must pass the 185 percent income test to be considered. Pilot projects may incorporate more restrictive criteria in their local plans, consistent with other income tests for FIP at rule 441—41.27(239).

g. Family members cannot be in a limited benefit period as described at 441—subrule 41.24(8), or any other sanction period as described in 441—Chapter 40, 41, or 42.

47.5(2) Offer to participate declined. Candidates for the pilot diversion program shall not be denied FIP on the basis that they do not want to participate in the pilot program.

47.5(3) Period of FIP ineligibility. Receipt of diversion assistance having a cash value to the family shall result in a period of ineligibility for FIP for that family, including new members moving into the household. Local projects shall have flexibility in determining the period of ineligibility ex-

cept that the period shall not exceed the number of calendar days arrived at by using the following formula:

$$\text{diversion amount} \div \frac{\text{(payment standard for the family size)}}{30} \times 2$$

For example, if the diversion assistance amount is $500, and the payment standard for the family of three is $426, the period of ineligibility cannot exceed 70 days.

$$\$500 \div \frac{\$426}{30} \times 2$$

The period of ineligibility shall include the seven-day wait period as described at rule 441—40.26(239), when the household applies at least seven days prior to the end of the period of ineligibility. However, there is no eligibility before the period ends, regardless of application date. If the household does not file an application until after the period of ineligibility, the effective date of eligibility requirements at 441—40.26(239) applies.

The specific period of ineligibility administered by each pilot shall be set forth in the local plans. These periods of ineligibility are applicable statewide, not limited to the local project area providing the assistance. The period of ineligibility shall not apply to diversion family members moving to other families.

47.5(4) Exempt as income. Diversion assistance shall be exempt as income in determining FIP eligibility as described at 441—paragraph 41.27(7)"ai."

47.5(5) Exempt from TANF provisions. Unless determined otherwise by the U.S. Department of Health and Human Services, receipt of diversion assistance shall not subject the family to the following TANF restrictions:

a. The five-year (60-month) lifetime limit.
b. Work participation rates.
c. Cooperation with child support recovery.

441—47.6(77GA,SF516) Local plans.

47.6(1) Written policies and procedures. Each approved pilot project shall have and maintain written policies and procedures for the project approved by the division administrator. Copies of the plan shall be filed in the county office and with the division administrator. The written policies and procedures shall be available to the public. At a minimum, these policies and procedures shall contain or address the following:

a. What types of services or assistance will be provided, e.g., car repair, licensing fees, and referral to other resources.
b. How determinations will be made that the service or assistance provided meets the program's objective of helping the family obtain or retain employment.
c. How assistance will be provided, e.g., cash payments, vouchers, vendor payments, and procedures for issuing payments.
d. The period of ineligibility for FIP.
e. The maximum (and minimum, if any) values of payments and services.
f. The frequency of receiving assistance.
g. How families most likely to benefit from the program are identified.
h. How families can enroll in the program as a voluntary alternative to FIP. If pilot diversion candidates complete a FIP application, the plan shall include procedures for withdrawing the FIP application. Any forms required to be completed by the family shall be identified by name and form number in the plan.
i. How families will be informed of the availability of the program, its voluntary nature, and how the program works, including periods of ineligibility for FIP.
j. How county offices administering a pilot project will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.
k. The process used to determine families are "otherwise eligible" for FIP, e.g., having potential project participants complete a standard FIP application.
l. How barriers related to employment are identified.
m. How inquiries will be responded to and assistance provided timely to address barriers to obtaining or retaining employment. The local plans shall specify time frames for taking action steps in administering the pilot project.

47.6(2) Other components. The local plan shall also describe or identify:

a. How staff will be trained to use the program.
b. The anticipated results for families in the pilot project following the receipt of diversion assistance.
c. The methods for evaluation.
d. The scope of evaluation (e.g., what other programs may be included).
e. How measurable results shall be determined.
f. Total funds received and available.
g. Any allocation for direct cash payments to families.
h. Any allocation for vouchers.
i. Any allocation for vendor payments.
j. Any allocation for services.
k. Any allocation for staff costs.
l. Any allocation for evaluation.
m. Any allocation for other expenses.

441—47.7(77GA,SF516) Notification and appeals.

47.7(1) Notification. All candidate households or households participating in the pilot diversion program under this division shall receive adequate written notice as described at 441—paragraph 7.7(1)"b," using Form 470-0486, Notice of Decision. The written notice shall:

a. Advise whether assistance under this division shall be provided.
b. Give the reason for the decision, if assistance shall not be provided.
c. Give the type, value (if applicable), and frequency of assistance as described at rule 441—47.4(77GA,SF516), if assistance shall be provided.
d. Give any period of ineligibility for FIP based on the written policies and procedures of the pilot as required by subrule 47.5(3) and described at rule 441—47.6(77GA,SF516), if assistance shall be provided.
e. Cite this division as legal authority for the decision.
f. Advise the household of its appeal rights under 441—Chapter 7 and this division.

47.7(2) Decisions regarding assistance. All decisions regarding assistance available under this division shall be in accordance with the rules in this division and the written policies and procedures of the approved project as required by rule 441—47.6(77GA,SF516).

47.7(3) Appealable actions. Decisions made by the department affecting clients may be appealed pursuant to

HUMAN SERVICES DEPARTMENT[441](cont'd)

441—Chapter 7. All sections of the local plan applicable to an appeal shall be provided as part of the appeal summary.

47.7(4) Nonappealable actions. Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under this division is that diversion funds for the approved pilot project have been reduced, exhausted, eliminated or otherwise encumbered.

441—47.8(77GA,SF516) Funding, rates and method of payment.

47.8(1) Funded amounts. The division administrator shall determine the amounts allocated to each approved pilot project based on available funding and the amount requested by each project.

47.8(2) Written funding agreements. Each approved pilot project shall enter into a written funding agreement with a third party to act as a fiscal agent to disburse money for purposes of providing assistance as described at subrule 47.4(1) and specified by the local plan. The written funding agreement shall stipulate:

a. The department shall be responsible for authorizing individual payments.

b. The fiscal agent shall be responsible for issuing payments.

c. Both the department and the fiscal agent shall keep and reconcile records for accountability and audit purposes.

d. All agreements shall be signed by the fiscal agent and the human services area administrator. Any agreements for $25,000 or more shall also be signed by the director. Other signatures may be required at the discretion of the division administrator.

e. The time frames for the fiscal agent to process payments.

f. Any other responsibilities of the department and the fiscal agent.

g. Provisions customarily required for agreements or contracts entered into by a state agency.

47.8(3) Rate setting for services not having a cash value. Rates for diversion assistance in the form of services not having a cash value shall be established in accordance with the following procedures:

a. Rates for diversion assistance services shall be established on an individual basis by the human services area administrator (HSAA) or designee.

b. The HSAA or designee shall evaluate proposed payment rates in approving diversion assistance services. Rates approved for providers with a purchase of service contract or Medicaid agreement with the department shall be similar to payment rates for comparable services provided through the purchase of service or Medicaid agreements. Rates for other types of services or supports shall be comparable to prevailing community standards.

c. Payment rates approved by a HSAA or designee for diversion assistance services on behalf of a family shall remain in effect for the time period authorized unless approval for modification is granted by the HSAA or designee.

47.8(4) Payment and billing.

a. The approved pilot project, in accordance with the local plan, shall notify the fiscal agent when diversion assistance payments are approved. This notification shall include a copy of the Authorization for the Department to Release Information, Form 470-2115, signed by the pilot diversion participant. It shall also include the name, mailing address and authorized amount of payment.

b. The fiscal agent shall issue payments within the time frames set forth in the written agreement.

c. The approved pilot project and the fiscal agent shall periodically reconcile their records.

441—47.9(77GA,SF516) Termination of pilot projects. The division administrator may immediately terminate an approved pilot project if:

1. The project is not fulfilling the conditions of its pilot proposal.

2. The project is at the conclusion of the authorized approval period, unless a new pilot proposal application has been submitted and approved.

3. Funding is reduced, exhausted, eliminated or otherwise encumbered.

441—47.10(77GA,SF516) Records and reports.

47.10(1) Case records. The provision of diversion assistance shall be documented by the department in the participant's income maintenance case record.

47.10(2) Records retention. All persons who contract with the county office shall maintain all records related to the program for five years. They shall allow federal or state officials access to all records upon request.

47.10(3) Reports.

a. The department shall complete a report to the legislature about the potential benefits for expanding the program. Pilot projects shall submit an interim evaluation report to the division administrator when directed, in preparation for making a recommendation to the legislature. This interim report shall include a description of actual and perceived advantages or benefits of the pilot diversion program to date, to both families and staff.

b. County offices having approved pilot projects shall provide other reports as requested by the division administrator in a manner, format and frequency specified by the administrator.

c. County offices shall be responsible for maintaining records sufficient for audit and tracking purposes.

These rules are intended to implement 1997 Iowa Acts, Senate File 516, section 12, subsection 2, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1).

441—47.11 to **47.20** Reserved.

DIVISION II

FAMILY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the department of human services family self-sufficiency grants program. The purpose of the program is to provide immediate and short-term assistance to a FIP participant, if it is reasonable to believe that assistance will enable the family to move to self-sufficiency by removing barriers related to obtaining or retaining employment. If funds were available to remove the barrier to self-sufficiency, a family might reduce the time of dependency on the family investment program (FIP).

Family self-sufficiency grants shall be available for payment to families or on behalf of specific families. The self-sufficiency grants to families shall be part of the PROMISE JOBS program.

441—47.21(77GA,SF516) Definitions.

"Candidate" means anyone expressing an interest in the family self-sufficiency grants program.

"Department" means the Iowa department of human services.

HUMAN SERVICES DEPARTMENT[441](cont'd)

"Division administrator" means the administrator of the division of economic assistance, or designee.

"Family" means "assistance unit" as defined at 441—40.21(239).

"Family investment program" or "FIP" means the program in Iowa that is a cash grant program designed to sustain families as provided by 441—Chapter 41.

"Family self-sufficiency grants" means the payments made to specific PROMISE JOBS participants, to vendors on behalf of specific PROMISE JOBS participants, or for services to specific PROMISE JOBS participants.

"Immediate, short-term assistance" means assistance provided under this division shall be authorized upon determination of need and that it shall not occur on a regular basis.

"Iowa workforce development (IWD) division administrator" means the administrator of the Iowa workforce development division of workforce development center administration, or designee.

"Local plan for family self-sufficiency grants" means the written policies and procedures for administering the grants for families as set forth in the plan developed by the PROMISE JOBS service delivery region as described in rule 441—47.26(77GA,SF516). The local plan shall be approved by the Iowa workforce development division administrator.

"Participant" means anyone receiving assistance under this chapter.

"PROMISE JOBS contract" means the agreement between the department and Iowa workforce development regarding delivery of PROMISE JOBS services.

"PROMISE JOBS service delivery regions" means the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions.

441—47.22(77GA,SF516) Availability of the family self-sufficiency grants program. The family self-sufficiency grants program shall be available statewide in each of the 15 PROMISE JOBS service delivery regions. Under the PROMISE JOBS contract, Iowa workforce development (IWD) shall allocate the funds available for authorization to each of the service delivery regions based on the allocation standards used for PROMISE JOBS service delivery purposes. The department actually retains the funds which are released through the PROMISE JOBS expense allowance authorization system.

441—47.23(77GA,SF516) General criteria. Family self-sufficiency grants candidates shall be PROMISE JOBS participants. Participation in the family self-sufficiency grants program is voluntary and shall be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the assistance offered by family self-sufficiency grants.

441—47.24(77GA,SF516) Assistance available in family self-sufficiency grants. Family self-sufficiency grants shall be authorized for removing an identified barrier to self-sufficiency when it can be reasonably anticipated that the assistance will enable participant families to retain employment or obtain employment in the two full calendar months following the date of authorization of payment. For example, if a payment is authorized on August 20, it should be anticipated that the participant can find employment in September or October.

47.24(1) Employment does not occur. If employment does not occur in the anticipated two-calendar month period or if the participant loses employment in spite of the self-sufficiency grant, no penalty is incurred and no overpayment has occurred.

47.24(2) Types of assistance. Family self-sufficiency grants are PROMISE JOBS benefits and shall be authorized through the PROMISE JOBS expense allowance system. The PROMISE JOBS service delivery region shall have discretion to determine those barriers to self-sufficiency which can be considered for family self-sufficiency grants such as, but not limited to, auto maintenance or repair, licensing fees, child care, and referral to other resources, including those necessary to address questions of domestic violence. Warrants may be issued to the participants, to a vendor, or for support services provided to the family. The PROMISE JOBS service delivery region shall have discretion in determining method of payment in each case, based on circumstances and needs of the family.

47.24(3) Limit on assistance. The total payment limit per family is $1,000 per year. A year for a family shall be the 12 fiscal months following the date of authorization of the initial payment for the family. A fiscal month begins and ends in different calendar months.

47.24(4) Frequency of assistance. Family self-sufficiency grants are intended to provide immediate and short-term assistance and must meet the criteria in this rule. While a family may be a candidate more than once and may receive payments in consecutive months in some circumstances, payments shall not be established as regular or ongoing.

47.24(5) Supplanting. Family self-sufficiency grants shall not be used for services already available through department, PROMISE JOBS, or other local resources at no cost.

47.24(6) Relationship to the family investment agreement. Family self-sufficiency grants are separate from the PROMISE JOBS family investment agreement process. While the family investment agreement must be honored at all times and renegotiated and amended if family circumstances require it, no family shall be considered to be choosing the limited benefit plan if the family chooses not to participate in the family self-sufficiency grant program.

441—47.25(77GA,SF516) Application, notification, and appeals.

47.25(1) Application elements. Each PROMISE JOBS service delivery region shall establish an application form to be completed by the PROMISE JOBS participant and the PROMISE JOBS worker when the participant asks to be a candidate for a family self-sufficiency grant. The application form shall contain the following elements:

a. An explanation of family self-sufficiency grants and the expectations of the program.

b. Identification of the family and the person representing the family.

c. A clear description of the barrier to self-sufficiency to be considered.

d. Demonstration of how removing the barrier is related to retaining or obtaining employment, meeting the criteria from rule 441—47.24(77GA,SF516).

e. Demonstration of why other department, PROMISE JOBS, or community resources cannot deal with the barrier to self-sufficiency.

f. Anticipated cost of removing the barrier to self-sufficiency.

47.25(2) Notification process. PROMISE JOBS shall use Form SS-1104-0, Notice of Decision: Services, to notify the candidate of the PROMISE JOBS decision regarding the

HUMAN SERVICES DEPARTMENT[441](cont'd)

family self-sufficiency grant. Decisions shall be in accordance with policies of this division and the local plan.

a. On approval, the form shall indicate the amount of the benefit that will be issued to the candidate or paid to a vendor, or the service that will be provided to the family.

b. On denial, the form shall indicate the reason for denial.

47.25(3) Appealable actions. The PROMISE JOBS decisions on family self-sufficiency grants may be appealed pursuant to 441—Chapter 7. Copies of the local plan as described at rule 441—47.26(77GA,SF516) shall be included with the appeal summary.

47.25(4) Nonappealable actions. PROMISE JOBS participants shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance from family self-sufficiency grants is that self-sufficiency grant funds have been reduced, exhausted, eliminated, or otherwise encumbered.

441—47.26(77GA,SF516) Approved local plans for family self-sufficiency grants. Each PROMISE JOBS service delivery region shall create and provide to IWD their written policies and procedures for administering family self-sufficiency grants. The plan shall be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department division administrator and the IWD division administrator. The written policies and procedures shall be available to the public at county offices, PROMISE JOBS offices, and at IWD. At a minimum, these policies and procedures shall contain or address the following:

47.26(1) A plan overview. The plan overview shall contain a general description detailing:

a. Any types of services or assistance which will be excluded from consideration for family self-sufficiency grants in the PROMISE JOBS service delivery region.

b. How determination will be made that the service or assistance requested meets the program's objective of helping the family retain employment or obtain employment.

c. How determination will be made that the proposed family self-sufficiency grant is not supplanting as required at subrule 47.24(5).

d. Services established and any maximum (and minimum, if any) values of payments of the services established by the PROMISE JOBS service delivery region.

e. Verification procedures or standards for documenting barriers, using written notification policies found at rule 441—93.137(249C).

f. The design of the application form.

g. Verification procedures or standards for documenting employment attempts if not already tracked by PROMISE JOBS procedures, using policies found at 441—subrules 93.135(3) and 93.135(4) and at rule 441—93.137(249C).

h. How applications will be processed timely to address barriers to obtaining or retaining employment.

i. Follow-up procedures on participant effort.

j. Procedures for tracking of family self-sufficiency grant authorizations in order to stay within service delivery region allocation.

k. How staff will be trained to administer the program.

47.26(2) Intake and eligibility determination. The policies and procedures shall describe:

a. How families most likely to benefit from self-sufficiency grant assistance are identified.

b. How families can apply for self-sufficiency grant assistance.

c. How families will be informed of the availability of self-sufficiency grant assistance, its voluntary nature, and how the program works.

d. How county offices and PROMISE JOBS offices will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.

e. Which PROMISE JOBS staff shall make decisions regarding identification of barriers and candidate eligibility for payment and what sign-off or approval is required before a payment is authorized.

47.26(3) A plan for evaluation of family self-sufficiency grants. The evaluation plan shall:

a. Describe tracking procedures.

b. Describe the plan for evaluation (e.g., what elements will be used to create significant data regarding outcomes).

c. Describe how measurable results will be determined.

d. Identify any support needed to conduct an evaluation (e.g., what assistance is needed from department and IWD).

e. Describe which aspects of the project were successful and which were not.

These rules are intended to implement 1997 Iowa Acts, Senate File 516, section 12, subsection 2, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1).

441—47.27 to **47.40** Reserved.

DIVISION III

COMMUNITY SELF-SUFFICIENCY GRANTS PROGRAM

PREAMBLE

These rules define and structure the department of human services community self-sufficiency grants pilot program. The purpose of this pilot program is to provide assistance to a FIP participant family, if it is reasonable to believe that the assistance will enable the family to move to self-sufficiency by removing systemic or communitywide or community-specific barriers related to obtaining or retaining employment. If the barrier to self-sufficiency were removed, a family might reduce the time of dependency on the family investment program (FIP).

Community self-sufficiency grants shall establish a limited number of pilot projects to identify and remove systemic or community barriers to self-sufficiency for targeted PROMISE JOBS participants in a geographic area. County department offices and PROMISE JOBS service delivery regions must apply jointly. Either entity can administer pilot projects; however, the department and PROMISE JOBS may work in conjunction with other local resources. This program gives local projects flexibility to better address systemic or community barriers to self-sufficiency for FIP participants.

441—47.41(77GA,SF516) Definitions.

"Approved pilot project" means a pilot proposal for a community self-sufficiency grant meeting the conditions in the request for application that has been reviewed and approved by the department division administrator and IWD division administrator and funded through the PROMISE JOBS contract. The project shall be designed to serve families in a specific geographic area, within the PROMISE JOBS service delivery regions determined by IWD, and detailed in the local plan defined in this division.

"Candidate" means anyone identified by a county office having an approved community self-sufficiency grants pilot project as likely to meet the criteria for participating in the project, and who is working with the county office,

HUMAN SERVICES DEPARTMENT[441](cont'd)

PROMISE JOBS office, or other entity, to enroll in the program.

"Community self-sufficiency grants" means the joint department and PROMISE JOBS pilot projects to identify and remove systemic or community barriers to self-sufficiency for PROMISE JOBS participants.

"Department" means the Iowa department of human services.

"Department division administrator" means the administrator of the division of economic assistance, or designee.

"Family" means "assistance unit" as defined at rule 441—40.21(239).

"Family investment program" or "FIP" means the program in Iowa that is a cash grant program designed to sustain families as provided by 441—Chapter 41.

"Iowa workforce development division (IWD) administrator" means the administrator of the Iowa workforce development division of workforce development center, or designee.

"Local plan for community self-sufficiency grants" means the written policies and procedures for identifying and removing community barriers to self-sufficiency as described in rule 441—47.45(77GA,SF516).

"Participant" means anyone receiving assistance under this division.

"Pilot proposal" means the community self-sufficiency grants project description submitted jointly by the department county office or offices and the PROMISE JOBS service delivery region prepared within the parameters of a request for application issued by the division administrator. The pilot proposal shall be reviewed by a panel of FIP, food stamp, Medicaid, services, data management, child support and PROMISE JOBS staff for completeness and feasibility of the project. Upon recommendation of this panel, the proposals will be referred to the department division administrator and the IWD division administrator. The division administrators may approve, modify and approve, or deny the proposal for a community self-sufficiency grant.

"PROMISE JOBS contract" means the agreement between the department and Iowa workforce development (IWD) regarding delivery of PROMISE JOBS services.

"PROMISE JOBS service delivery regions" means the PROMISE JOBS service delivery entities which correspond to the 15 Iowa workforce development regions.

"Request for application" means a request issued by the division administrator to county offices and PROMISE JOBS service delivery regions for proposals to implement a pilot project under this division. The request shall provide background information about the purpose, authorization and funding for the pilot diversion program, as well as general parameters, specific criteria and time frames for submitting a proposal.

441—47.42(77GA,SF516) Availability of the community self-sufficiency grants program. The community self-sufficiency grants program shall be available only in those counties, PROMISE JOBS service delivery regions, or other designated areas of the state having an approved pilot project as defined at rule 441—47.41(77GA,SF516). Under the PROMISE JOBS contract, IWD shall make the funds available through the PROMISE JOBS service delivery regions which are participating in an approved pilot project. This enables the PROMISE JOBS entity to become the fiscal agent for the approved pilot project. It does not restrict the ability of the department and PROMISE JOBS partners in an approved pilot project to assign responsibility for administration of the program to the department or to another entity as part of a local collaboration effort.

441—47.43(77GA,SF516) General criteria. Community self-sufficiency grants candidates shall be PROMISE JOBS participants. Participation in the community self-sufficiency grants program is voluntary and shall be based on an informed decision by the family. Further, candidates must have identifiable barriers to obtaining or retaining employment that can be substantially addressed through the assistance offered through the services developed and provided according to the local plan for community self-sufficiency grants.

441—47.44(77GA,SF516) Assistance available under community self-sufficiency grants. Pilot projects developed under community self-sufficiency grants shall be designed to identify and remove systemic or community barriers to self-sufficiency, helping targeted PROMISE JOBS participant families to obtain or retain employment. The means of identifying and addressing the community or systemic barriers to self-sufficiency for each project shall be detailed in the local plans.

47.44(1) Types of assistance. Pilot projects developed under community self-sufficiency grants shall be designed to identify and address community barriers to self-sufficiency for FIP participants such as, but not limited to, community-wide or community-specific transportation needs, unusual child care needs not addressed by existing child care programs such as sick-bay child care or shift child care, parent or other relative care needs, language barrier programs, meeting special employer needs, prework skills training that is not available through PROMISE JOBS, economic development-related community needs, or community needs for work-based learning projects. Specific types of barriers to be addressed by each pilot shall be set forth in the joint plans as described at rule 441—47.45(77GA,SF516).

47.44(2) Supplanting. Community self-sufficiency grants shall not be used for services already available through department, PROMISE JOBS, or other local resources at no cost.

441—47.45(77GA,SF516) Approved pilot project plans. Each approved community self-sufficiency grant pilot project shall have and maintain written policies and procedures for the project in the project department county offices, PROMISE JOBS offices, and offices of any other entities involved in the project. The plan shall be reviewed for required elements and quality of service to ensure that it meets the purpose of the program and approved by the department division administrator and the IWD division administrator. At a minimum, those policies and procedures shall contain or address the following:

47.45(1) A plan overview. The plan overview shall contain a general description detailing:

a. What types of services or assistance will be available under the community self-sufficiency grant project.

b. How determination will be made that the service or assistance provided meets the program's objective of helping FIP participant families obtain or retain employment.

c. How determination will be made that the proposed community self-sufficiency grant project is not supplanting as required at subrule 47.44(2).

d. How assistance will be provided.

e. Any established maximum (and minimum, if any) for availability of services to specific families if limits are necessary.

f. The frequency of receiving assistance under the project, if limits are necessary.

HUMAN SERVICES DEPARTMENT[441](cont'd)

g. How staff will be trained to use the program.

h. Anticipated results for families in the pilot following development of the project design.

47.45(2) Intake and eligibility determination. The policies and procedures shall describe how:

a. Families most likely to benefit from the community self-sufficiency grant project are identified.

b. Families will access the project services.

c. Families will be informed of the availability of the project services, its voluntary nature, and how the program works.

d. Department county offices and PROMISE JOBS offices administering a pilot project will maintain, provide to pilot participants, and otherwise make available, written policies and procedures describing the project.

47.45(3) A plan for evaluation of the project. The evaluation plan shall:

a. Describe methods for evaluation.

b. Describe scope of evaluation (e.g., what other programs may be included).

c. Describe how measurable results will be determined.

d. Identify any support needed to conduct an evaluation.

e. Describe which aspects of the project were successful and which were not.

47.45(4) Budget. The budget shall contain the:

a. Local non-PROMISE JOBS funds to be used in the pilot project.

b. Community self-sufficiency grant funds requested.

c. Allocation for direct cash payments to families.

d. Allocation for vouchers.

e. Allocation for vendor payments.

f. Allocation for services.

g. Allocation for staff costs.

h. Allocation for evaluation.

i. Allocation for other expenses.

441—47.46(77GA,SF516) Notification and appeals for community self-sufficiency grant projects.

47.46(1) Notification. If services of the project are available to PROMISE JOBS participants without differentiation, formal notice to the participant of approval or denial is not required. If the services of the project involve selecting certain participants to receive services while others with the same need are denied services, then all candidate households or households participating in the community self-sufficiency grant project shall receive written notice advising the candidate households:

a. Whether assistance under the community self-sufficiency grant shall be provided.

b. If assistance shall not be provided, the reason for this decision.

c. If assistance shall be provided, the type, value (if applicable), and frequency of assistance as described in the approved pilot project's plan.

d. Of their appeal rights under 441—Chapter 7 and this rule.

47.46(2) Decisions regarding assistance. All decisions regarding assistance available under a community self-sufficiency grant shall be in accordance with the rules in this chapter and the written policies and procedures of the approved project as required by rule 441—47.45(77GA,SF516).

47.46(3) Appealable actions. Decisions affecting participants made by the department or PROMISE JOBS may be appealed pursuant to 441—Chapter 7. Copies of the local plan shall be included with the appeal summary.

47.46(4) Nonappealable actions. Households shall not be entitled to an appeal hearing if the sole basis for denying, terminating or limiting assistance under a community self-sufficiency grant is that self-sufficiency grant funds for the approved pilot project have been exhausted or are otherwise encumbered.

441—47.47(77GA,SF516) Termination of community self-sufficiency grant pilot projects. The division administrator, in conjunction with IWD, may immediately terminate an approved pilot project:

1. That is not fulfilling the conditions of its pilot proposal.

2. At the conclusion of the authorized approval period, unless a new pilot proposal application has been submitted and approved.

3. When funding is reduced, exhausted, eliminated or otherwise encumbered.

441—47.48(77GA,SF516) Records and reports.

47.48(1) Case records. The provision of services for a participant under the community self-sufficiency grant shall be documented by the department and PROMISE JOBS in each participant's appropriate case record.

47.48(2) Reports. The department shall report to the legislature about the potential benefits for expanding the program. Community self-sufficiency grant pilot projects shall submit an interim evaluation report to the division of economic assistance when directed, in preparation for making a recommendation to the legislature. This interim report shall include a description of actual and perceived advantages or benefits of the community self-sufficiency grant to date, to both families and staff.

These rules are intended to implement 1997 Iowa Acts, Senate File 516, section 12, subsection 2, and House File 715, section 3, subsection 3, paragraph "f," subparagraph (1).

ITEM 5. Amend rule 441—75.26(249A) as follows:

441—75.26(249A) References to the family investment program. Notwithstanding any other provisions of this chapter, any reference to the family investment program, including income and resource standards and income and resource methodologies under that program, shall be considered a reference to the treatment group provisions of that program as in effect as of July 16, 1996. Any reference to persons receiving assistance under the family investment program shall be considered a reference to persons who meet the treatment group eligibility requirements of the family investment program as that program was in effect as of July 16, 1996. *Moneys received through the pilot self-sufficiency grants program or through the pilot diversion program shall be exempt as income when determining FIP-related Medicaid eligibility.*

[Filed Emergency 9/16/97, effective 10/1/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7575A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

State hunting seasons on migratory birds must be set within frameworks established annually by the Fish and Wildlife Service, U.S. Department of the Interior. These frameworks specify shooting hours, bag limits and possession limits, as well as season lengths and outside dates. These frameworks were finalized by the Fish and Wildlife Service in late August. Therefore, adoption of a final rule by the Department could not take place prior to this time.

Notice of Intended Action was published in the March 12, 1997, Iowa Administrative Bulletin as ARC 7116A. A public hearing was held April 12, 1997. Several changes have been made as a result of changes in the federal framework. The changes are as follows:

1. Rule 571—91.1(481A) has been changed to reflect new season dates and bag limits for ducks.
2. Rule 571—91.2(481A) has been changed to reflect new season dates for coot.
3. Rule 571—91.3(481A) has been changed to reflect new season dates for geese.
4. The date for the youth duck hunt day has been changed.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these rules confer a benefit on a segment of the public by becoming effective immediately, and that the usual effective date of these rules would unnecessarily restrict the public by delaying the opening of the waterfowl and coot seasons. Therefore, these rules shall become effective upon filing with the Administrative Rules Coordinator on September 19, 1997.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

The following amendments are adopted.

ITEM 1. Amend 571—91.1(481A) as follows:

571—91.1(481A) Ducks (split season). Open season for hunting ducks shall be September ~~21~~ *20* to September ~~25~~ *24*, ~~1996~~ *1997*; October ~~19~~ *11* to December ~~2~~ *4*, ~~1996~~ *1997*, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and September ~~21~~ *20* to September ~~23~~ *24*, ~~1996~~ *1997*; October ~~19~~ *18* to December ~~4~~ *11*, ~~1996~~ *1997*, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

91.1(1) Bag limit. The daily bag limit of ducks is ~~5~~ *6*, and may include no more than 4 mallards (no more than ~~1~~ *2* of which may be ~~a female~~ *females*), 1 black duck, 2 wood ducks, ~~1~~ *3* pintail, *3 mottled ducks,* 2 redhead and 1 canvasback. The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

91.1(2) No change.

ITEM 2. Amend 571—91.2(481A), introductory paragraph, as follows:

571—91.2(481A) Coots (split season). Open season for hunting coots shall be September ~~21~~ *20* to September ~~25~~ *24*, ~~1996~~ *1997*; October ~~19~~ *11* to December ~~2~~ *4*, ~~1996~~ *1997*, in that portion of the state lying north of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border; and September ~~21~~ *20* to September ~~23~~ *24*, ~~1996~~ *1997*; October ~~19~~ *18* to December ~~4~~ *11*, ~~1996~~ *1997*, in that portion of the state lying south of a line beginning on the Nebraska-Iowa border at State Highway 175, southeast to State Highway 37, east to U.S. Highway 59, south to I-80 and along I-80 east to the Iowa-Illinois border. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 3. Amend 571—91.3(481A), introductory paragraph, to read as follows:

571—91.3(481A) Geese. The north goose hunting zone is that part of Iowa north of a line beginning on the Nebraska-Iowa border at State Highway 175, east to State Highway 37, southeast to U.S. Highway 59, south to I-80 and along I-80 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state. The open season for hunting Canada geese only is September ~~14~~ *13* and ~~15~~ *14*, ~~1996~~ *1997*, in the north goose hunting zone only. The open season for hunting Canada geese, white-fronted geese and brant is ~~September 28~~ *October 4* to December ~~6~~ *12*, ~~1996~~ *1997*, in the north goose hunting zone and October ~~5~~ *4* to October ~~13~~ *12* and October ~~19~~ *18* to December ~~18~~ *17*, ~~1996~~ *1997*, in the south goose hunting zone. The open season for hunting snow geese is October ~~12~~ *4* to ~~January 10~~ *December 31*, 1997, statewide, and will reopen statewide from February ~~22~~ *21* to March ~~9~~ *10*, ~~1997~~ *1998*. Shooting hours are one-half hour before sunrise to sunset each day.

ITEM 4. Amend paragraph 91.4(2)"i" as follows:

i. Area nine. Portions of Monona and Woodbury Counties bounded as follows: Beginning at the Iowa-Nebraska state line along the Missouri River in Monona County at the southwest corner of the NW 1/4 of section 18, township 82 north, range 45 west; extending one and one-half miles east along an unnumbered county road to the center of section 17, township 82 north, range 45 west; then north one mile along county road to the center of section 8, township 82 north, range 45 west; thence east one mile along county road to the intersection of Monona County Roads K45 and E60; thence north and northwest approximately 20 miles along Monona County Road K45 to the junction with State Highway ~~75~~ *970* in Woodbury County; thence continuing northwest along State Highway ~~75~~ *970* approximately one and one-half miles to the intersection with Woodbury County Road K42; thence northerly approximately 11 miles along County Road K42 to the intersection with 220th Street; thence west along 220th Street about 6 miles to the junction with State Highway ~~75~~ *970*; thence continuing west approximately 3 miles along the Sergeant Bluff Drainage Ditch to the Iowa-Nebraska state line along the Missouri River; thence southerly along the state line approximately 43 miles to the point of beginning.

ITEM 5. Amend paragraph 91.4(2)"k" as follows:

NATURAL RESOURCE COMMISSION[571](cont'd)

k. Area eleven. Starting at the junction of the navigation channel of the Mississippi River and the mouth of the Maquoketa River in Jackson County, proceeding southwesterly along the high-water line on the west side of the Maquoketa River to U.S. Highway 52, south along U.S. Highway 52 *(including the right-of-way)* to the intersection with County Road Z-40, south on County Road Z-40 *(including the right-of-way)* to the junction with U.S. Highway 64, east on U.S. Highway 64 to the Sioux Line Railroad at Sabula, north and west along the Sioux Line Railroad to the east edge of section 27, township 85N, range 6 east, north to the intersection of sections 27 and 22, west along the common boundary of sections 27 and 22 and sections 28 and 21, township 85N, range 6 east, to the Green Island levee, northeast along a line following the Green Island levee to the center of the navigational channel of the Mississippi River, north along the center of the navigational channel to the point of beginning.

ITEM 6. Amend 571—91.6(481A) as follows:

571—91.6(481A) Youth duck hunt. A special youth duck hunt will be held statewide on ~~October 5~~ *September 27*, ~~1996~~ *1997*. Youth hunters must be 15 years old or younger. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks. The adult may hunt for any other game birds for which the season is open. The daily bag limit is the same as for the regular duck season, as defined in subrule 91.1(1). The possession limit is the same as the daily bag limit. All other hunting regulations in effect for the regular duck season apply to the youth hunt.

[Filied Emergency After Notice 9/19/97, effective 9/19/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7564A

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 261.3 and 261.71(3), the College Student Aid Commission adopts Chapter 32, "Chiropractic Graduate Student Forgivable Loan Program," Iowa Administrative Code.

This new chapter establishes rules for administering the Chiropractic Graduate Student Forgivable Loan Program, which was established in Iowa Code section 261.71.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 18, 1997, as ARC 7297A. This rule has been changed from that published under Notice to include recommendations advanced by staff at Palmer College of Chiropractic. Subrule 32.1(2), paragraph "b," now reads as follows: "The maximum award from state funds to an eligible student is $700 per trimester."

This chapter was adopted in final form on September 16, 1997.

This rule will become effective on November 12, 1997.

This rule is intended to implement Iowa Code section 261.71.

The following new chapter is adopted.

CHAPTER 32
CHIROPRACTIC GRADUATE STUDENT FORGIVABLE LOAN PROGRAM

283—32.1(261) Chiropractic graduate student forgivable loan program. The chiropractic graduate student forgivable loan program is a state-supported and administered forgivable loan program for Iowans enrolled at Palmer College of Chiropractic.

32.1(1) Definitions. As used in this chapter:

"Chiropractic practice" means working full-time as a licensed chiropractor in the state of Iowa as certified by the state board of examiners.

"Iowa resident student" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes, 681 IAC 1.4(262).

32.1(2) Recipient eligibility.

a. Individuals who are enrolled at the Palmer College of Chiropractic on or after July 1, 1997, who meet the Iowa residency criteria as defined in 681 IAC 1.4(262) and plan to practice chiropractic in Iowa are eligible to apply for program benefits.

b. The maximum award from state funds to an eligible student is $700 per trimester.

32.1(3) Criteria for selection of recipients. Priority will be given to chiropractic students who show considerable financial need and who are willing to practice in a designated shortage area within the state of Iowa.

32.1(4) Promissory note. The chiropractic recipient of a loan under this program shall sign a promissory note agreeing to practice chiropractic in Iowa for one full year for each loan received or to repay the loan and accrued interest according to repayment terms specified in the note.

32.1(5) Interest rate. The rate of interest on loans under this program shall be at the rate of 10.5 percent per annum on the unpaid principal balance.

32.1(6) Disbursement of loan proceeds.

a. The full loan amount will be disbursed when the college certifies that the borrower is an Iowa resident and enrolled in good standing.

b. The loan check will be made copayable to the borrower and Palmer College of Chiropractic and will be sent to the college within ten days following the receipt of the proper certification.

c. The college will deliver the check to the student and require that the loan check be endorsed to the college to be applied directly to the borrower's tuition account.

d. If the student withdraws from attendance and is entitled to a refund of tuition and fees, the pro-rata share of the refund attributable to the state loan must be refunded to the commission.

32.1(7) Loan cancellations.

a. Thirty days following the termination of enrollment at Palmer College of Chiropractic or termination of a chiropractic practice in the state of Iowa, the borrower shall notify the commission of the nature of the borrower's employment or educational status.

b. To certify eligibility for cancellation, the borrower must submit to the commission an affidavit from the state licensing board verifying that the borrower practiced as a licensed chiropractor in the state of Iowa for 12 consecutive months for each annual loan to be canceled.

c. If the borrower qualifies for partial loan cancellation, the commission shall notify the borrower promptly and revise the repayment schedule accordingly.

d. In the event of death or total and permanent disability, a borrower's obligation to pay this loan is canceled. Borrowers seeking forgiveness as a result of total or permanent disability must submit sufficient information substantiating the claim to the commission. Reports of a borrower's death will be referred to the licensing board for confirmation.

32.1(8) Loan payments.

a. Prior to the start of the repayment period, the commission shall provide the borrower with a repayment schedule, modified to reflect any applicable cancellation benefits.

b. It shall be the borrower's responsibility to remit payments to the commission by the fifteenth day of each month.

c. In the event the borrower fails to abide by any material provision of the promissory note or fails to make any payment due under the promissory note within ten days after the date the payment is due, the commission may declare the borrower in default and declare the entire unpaid balance and accrued interest on the promissory note due.

d. The borrower is responsible for notifying the commission immediately of a change of name, place of employment, or home address.

32.1(9) Deferral of repayment.

a. Repayment of the borrower's loan obligation may be deferred under the following circumstances: active duty in the United States military service, not to exceed three years; during a period of temporary disability, not to exceed three years.

b. Repayment of the borrower's loan obligation under this loan program is not required during periods of enrollment as a student at Palmer College of Chiropractic.

c. Forbearance is a revision in repayment terms to temporarily postpone payments. It may be granted when a borrower experiences a temporary hardship and is willing but unable to pay in accordance with the repayment schedule. Borrowers remain responsible for interest accrual during forbearance periods.

The program administrator may grant forbearance for periods of less than six months; periods of greater than six months but less than one year must be approved by the

executive director. Forbearance periods exceeding one year must be approved by the commission.

32.1(10) Restrictions. A borrower who is in default on a Stafford Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan payments. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapter 5, Iowa Administrative Code.

This rule is intended to implement Iowa Code section 261.71.

[Filed 9/18/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7592A

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 Chapter 28, "Local Housing Assistance Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7437A** on August 13, 1997. The IDED Board adopted the new chapter on September 18, 1997.

The 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.

The following comments were received at the public hearing: (1) The meaning of the term "financing gap" in subrule 28.6(4) is unclear. (2) Eligible applicants should explicitly include homeless service providers. (3) Eligible activities should explicitly include the provision of shelter and housing to homeless families and individuals. (4) The term "other unmet housing needs" in rule 261—28.4(77GA,HF732) to describe eligible activities is not adequate for the promotion of funding operations of homeless service providers. (5) Provisions for a housing advisory committee should be stipulated in the rules. (6) Rule language emphasizes project-based housing development, rather than ongoing program-based assistance. (7) The rules should encourage the development of local collaborative housing efforts. (8) The rules should stipulate the internal (IDED) coordination related to administration of LHAP, particularly in reference to housing needs assessments. (9) The term "nonluxury housing" in paragraph 28.4(1)"a" should be defined. (10) The legislation authorizing the program references housing development meeting a range of housing needs, but the rules do not. (11) The rules should remain as flexible as possible, particularly to accommodate rural housing activity.

Based on these comments, the following changes were made to the proposed rules: (1) Rule 28.1(77GA,HF732), introductory paragraph, was revised to state, "The local housing assistance program is designed to assist communities on a cooperative basis to address a range of housing needs to 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." (2) The entity "homeless service providers" was added as an eligible applicant to rule 261—28.3(77GA, HF732). (3) The activity "provision of shelter and housing to homeless families and individuals" was added as an eligible activity to subrule 28.4(1). (4) Subrule 28.6(1) was revised to state, "A housing needs assessment must have been completed within the five years preceding application for the community in which the activity will be undertaken. Review of applications on this criterion will be coordinated with the IDED staff responsible for overseeing housing needs assessments." (5) The term "financing gap" was removed from subrule 28.6(4). The revised subrule states, "A need for LHAP funds must exist after all other financial resources have been identified for the proposed activity."

No change was made to rule 261—28.4(77GA,HF732). The term "other unmet housing needs" is broad enough to include homeless shelter operations, as long as "homeless shelter operations" is identified as an unmet housing need in a community. The request to include a rule that establishes a housing advisory committee was not accepted. IDED will be initiating a housing advisory committee, but because its purview will extend beyond LHAP into the general housing arena, the LHAP administrative rules are not the appropriate place to establish and describe the committee. No change was made in response to the comment that the rules emphasize project-based rather than program-based development. The term "housing activity" is used throughout the rules to describe both housing projects and housing programs. "Activity" is explicitly defined in rule 28.2(77GA,HF732) to mean "one or more specific housing activities, projects or programs assisted with LHAP funds." No change was made in response to the comment that the rules should encourage the development of local collaborative efforts. The rules as proposed and adopted encourage collaboration: Rule 261—28.1(77GA, HF732) states that the purpose of LHAP is to assist communities on a "cooperative" basis; subrule 28.3(2) provides for joint applications; rule 28.7(77GA,HF732), numbered paragraph "8," establishes as a review criterion "coordination with other housing and economic development efforts." In the interest of keeping the rules as flexible as possible, the request to define "nonluxury housing" was not accepted. The rules do not impose strict criteria regarding housing cost, size and amenities, which will allow applicants the opportunity and responsibility to justify how the activity they propose is "nonluxury housing."

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

These rules will become effective on November 12, 1997.

The following **new** chapter is adopted.

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 a range of housing development needs to 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 that 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 that 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, economic development organizations and homeless service providers.

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, provision of shelter and housing to homeless families and individuals 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. Review of applications on this criterion will be coordinated with the IDED staff responsible for overseeing housing needs assessments.

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 need for LHAP funds 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 appli-

cant demonstrate that lack of LHAP funding will cause the 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.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7591A

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7435A** on August 13, 1997. The IDED Board adopted the amendment on September 18, 1997.

The amendment extends the eligible population level from 20,000 to 30,000.

A public hearing was held on September 2, 1997. No comments concerning the proposed amendment were received from the public. The final amendment is identical to that published under Notice of Intended Action.

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

This amendment will become effective on November 12, 1997.

The following amendment is adopted.

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.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7590A

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7433A** on August 13, 1997. The Board adopted the amendments on September 18, 1997.

The 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.

A public hearing to receive comments about the proposed amendments was held on September 5, 1997. No comments were received about the proposed amendments. The adopted amendments are identical to the proposed amendments.

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

These amendments will become effective on November 12, 1997.

The following amendments are adopted.

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."*

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7587A

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 Chapter 60, "Entrepreneurial Ventures Assistance Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7358A** on July 16, 1997. The Board adopted the new chapter on September 18, 1997.

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

A public hearing was held on August 6, 1997, to receive comments about the proposed rules. Comments submitted have been reviewed and considered by the Department, but no changes to the proposed rules were considered necessary at this time. The final rules are identical to the proposed rules.

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

These rules will become effective on November 12, 1997.

The following new chapter is adopted.

CHAPTER 60
ENTREPRENEURIAL VENTURES ASSISTANCE PROGRAM

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

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

"Department" or "IDED" means the Iowa department of economic development.

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

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

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

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

261—60.3(15) Eligibility requirements.

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

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

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

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

261—60.4(15) Financial assistance. Applicants may apply to IDED for financial assistance to assist with their business start-up or early-stage growth. The applicant may request up to $20,000 to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, software, or for working capital needs, or other business expenses deemed reasonable and appropriate by IDED.

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

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

261—60.7(15) Review process.

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

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

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

a. Type of business.

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

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

(2) Assistance may be provided to industries other than those listed in "1" through "6" above; however, the applicant will have to provide a strong rationale regarding how that industry diversifies, strengthens or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Ratio-

nale that is provided will be reviewed by department staff to determine eligibility as a targeted industry. Items that will be considered in determining an industry's benefit to Iowa's economic base will include:

1. The majority of the products or services produced by the industry are exported out of Iowa;
2. The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
3. The goods or services produced by this industry diversify Iowa's economy;
4. The goods or services provided by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
5. The industry shows potential for future growth;
6. The functions of the industry do not produce harmful effects for Iowa's natural environment; and
7. Whether the average wages of the majority of the occupations in the industry are above the statewide average wage.

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

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

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

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

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

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

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

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

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

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

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

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

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7570A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of this rule making is to update references in Chapters 60, 62, and 63 to the Federal Water Pollution Control Act and federal effluent and pretreatment standards as well as associated analytical methods found in 40 Code of Federal Regulations (CFR). The amendment to Chapter 60 updates the definition of "Act" to include amendments to the Federal Water Pollution Control Act (also known as the Clean Water Act) through July 1, 1997. The amendments to Chapter 62 update references to federal effluent and pretreatment standards, and the amendment to Chapter 63 updates the reference to the federally approved methods for the analysis of wastewater samples.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has determined previously that the notice and public participation requirements of Iowa Code section 17A.4(1) are unnecessary for the adoption, by reference, of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the adopted effluent and pretreatment standards must be no more or less stringent than federal standards. The standards must be at least as

stringent as federal standards to maintain primacy in the National Pollutant Discharge Elimination System (NPDES) program and Iowa Code section 455B.173(3) prohibits the adoption of effluent and pretreatment standards more stringent than federal standards. The Commission also finds that public participation is unnecessary when updating the reference to approved analytical methods as these methods are required to be used to implement federal effluent and pretreatment standards.

The Commission adopted these amendments on September 15, 1997.

These amendments will become effective on November 12, 1997.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, ~~1996~~ *1997*, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, as follows:

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, ~~1996~~ *1997*, are applicable to the following categories:

ITEM 3. Amend rule 567—62.5(455B) as follows:

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, ~~1996~~ *1997*.

ITEM 4. Amend subrule **63.1(1)**, paragraph **"a,"** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, ~~1996~~ *1997*.

[Filed Without Notice 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7566A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby amends Chapter 211, "Grants for Regional Collection Centers of Conditionally Exempt Small Quantity Generators and Household Hazardous Wastes," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7383A**. A public hearing was held on August 8, 1997. No written or verbal comments were received. These amendments are identical to those published under Notice of Intended Action.

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

These amendments will become effective November 12, 1997.

The following amendments are adopted.

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

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

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

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

To be eligible to receive RCC operations support, RCCs must meet the requirements described in rule 567—214.11(455F). The method to determine the percentage of operations support funds that each eligible RCC may receive is also described in rule 567—214.11(455F). Funding assistance under this rule may be disbursed to eligible operating RCCs at the same time as the RCC household hazardous material disposal funding, rule 567—214.11(455F).

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

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7567A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.412 and 455B.485, the Environmental Protection Commission hereby amends Chapter 213, "Packaging—Heavy Metal Content," Iowa Administrative Code.

This chapter regulates the heavy metal content of packaging and packaging components produced or distributed in the state of Iowa. The amendments to this chapter are necessary to implement the recent amendment to Iowa Code section 455D.19. The amendments pertain to exemption eligibility and definitions.

Notice of Intended Action was published in the June 18, 1997, Iowa Administrative Bulletin as **ARC 7309A**. The adopted amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 455D.19.

These amendments will become effective November 12, 1997.

The following amendments are adopted.

ITEM 1. Amend rule 567—213.3(455D) as follows:

567—213.3(455D) Definitions. The following terms, as used in this chapter, shall have the following meanings:

"Department" means the department of natural resources as created under Iowa Code section 455A.2.

"Distributor" means a person who takes title to ~~products or packaging~~ *one or more packages or packaging components* purchased for *promotional purposes or* resale. *A person involved solely in delivering packages or packaging components on behalf of third parties is not a distributor.*

"Incidental presence" means that these elements were not intentionally introduced during manufacturing or distribution and are below the concentration levels established by the department in subrule 213.4(3).

"Intentional introduction" means an act of deliberately utilizing a regulated metal in the formulation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality. Intentional introduction does not include the use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, if the incidental presence of a residue of the metal in the final package or packaging component is neither desired nor deliberate and if the final package or packaging component is in compliance with Iowa Code section 455D.19(4), paragraph "c." Intentional introduction also does not include the use of recycled materials as feedstock for the manufacture of new packaging materials, if the recycled materials contain amounts of a regulated metal and if the new package or packaging component is in compliance with Iowa Code section 455D.19(4), paragraph "c."

"Manufacturer" means a person who ~~offers for sale or who sells products or packaging to a distributor~~ *produces one or more packages or packaging components.*

"Manufacturing" means physical or chemical modification of one or more materials to produce packaging or packaging components.

"Offer for promotional purposes" means any transfer of title or possession, or both, of packaging or products in packaging without consideration.

"Offer for sale" means any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of packaging or products in packaging for a consideration in any manner or any means whatsoever.

"Package" means a container which provides a means of marketing, protecting, or handling a product, including a unit package, an intermediate package, or a shipping container. Package also includes, but is not limited to, unsealed receptacles, such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

"Packaging component" means any individual assembled part of a package, including, but not limited to, interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, ~~or~~ labels, *and tin-plated steel.*

"Regulated metal" means any metal regulated under this chapter.

"Reusable entities" means packaging or packaging components having a controlled distribution and reuse subject to the exemption provided in Iowa Code section 455D.19(5), paragraph "e."

"Tin-plated steel" means a material that meets the American Society for Testing and Materials (ASTM) specification A-623 and shall be considered as a single package component. *Electrogalvanized coated steel and hot-dipped coated galvanized steel that meets the American Society for Testing and Materials (ASTM) specifications A-879 and A-529 shall be treated in the same manner as tin-plated steel.*

ITEM 2. Amend subrule 213.4(1) as follows:

213.4(1) Prohibition of packaging. ~~Effective July 1, 1992, a~~ *A* manufacturer or distributor shall not offer for sale or sell, or offer for promotional purposes, a package or packaging component in this state, which includes in the package itself or in any packaging component inks, dyes, pigments, adhesives, stabilizers or any other additives, any lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution. This prohibition does not apply to the incidental presence of any of these elements. In addition, this prohibition does not apply to any refillable glass and ceramic package or packaging component that is managed under a comprehensive system resulting in reuse and where the lead and cadmium from the component do not exceed the Toxicity Characteristic Leachability Procedures (TCLP) of leachability of lead and cadmium as set forth by the United States Environmental Protection Agency.

ITEM 3. Rescind and reserve subrule **213.4(2)**.

ITEM 4. Rescind rule 567—213.6(455D) and insert in lieu thereof the following **new** rule:

567—213.6(455D) Exemptions. The following packaging and packaging components are exempt from the requirements of Iowa Code section 455D.19:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1990, and packaging or packaging components used by the alcoholic beverage industry or the wine industry prior to July 1, 1992.

2. Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety require-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ments of federal law or for which there is no feasible alternative if the manufacturer of a packaging or packaging component petitions the department for an exemption from the provisions of this paragraph for a particular packaging or packaging component. The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents.

3. Packages or packaging components that would not exceed the maximum contaminant levels established but for the addition of recycled materials.

4. Packages or packaging components that are reused, but exceed contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c," if all of the following criteria are met:

- The product being conveyed by the package, including any packaging component, is regulated under federal or state health or safety requirements.
- Transportation of the packaged product is regulated under federal or state transportation requirements.
- The disposal of the packages or packaging components is performed according to federal or state radioactive or hazardous waste disposal requirements.

The department may grant a two-year exemption if warranted by the circumstances and an exemption may, upon meeting the criteria of this paragraph, be renewed for additional two-year periods.

5. Packages or packaging components which qualify as reusable entities that exceed the contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c," if the manufacturers or distributors of such packages or packaging components petition the department for an exemption and receive approval from the department according to the following standards based upon a satisfactory demonstration that the environmental benefit of the controlled distribution and reuse is significantly greater than if the same package is manufactured in compliance with the contaminant levels set forth in Iowa Code section 455D.19(4), paragraph "c." The department may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting the four criteria listed in paragraphs "1" to "4" of this rule, be renewed for additional two-year periods.

In order to receive an exemption, the application must ensure that reusable entities are used, transported, and disposed of in a manner consistent with the following criteria:

- A means of identifying in a permanent and visible manner those reusable entities containing regulated metals for which an exemption is sought.
- A method or regulatory and financial accountability so that a specified percentage of the reusable entities manufactured and distributed to another person are not discarded by the person after use, but are returned to the manufacturer or the manufacturer's designee.
- A system of inventory and record maintenance to account for the reusable entities placed in, and removed from, service.
- A means of transforming returned entities that are no longer reusable into recycled materials for manufacturing or into manufacturing wastes which are subject to existing federal or state laws or regulations governing manufacturing wastes to ensure that these wastes do not enter the commercial or municipal waste stream.

The application for an exemption must document the measures to be taken by the applicant as set out in Iowa Code section 455D.19(5), paragraph "e," subparagraphs (1) to (4).

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7568A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.6, the Environmental Protection Commission hereby amends Chapter 214, "Household Hazardous Materials Program," Iowa Administrative Code.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7384A**. A public hearing was held on August 8, 1997. No written or verbal comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 455F.

These amendments will become effective November 12, 1997.

The following amendments are adopted.

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

567—214.11(455F) Regional collection center household hazardous material disposal funding. All RCCs are eligible to receive funding from the department to offset the cost associated with proper disposal of household hazardous waste by a hazardous waste contractor. The ~~additional 3 percent~~ *source for this funding is* described in Iowa Code ~~Supplement~~ section 455E.11(2)"a"(2)(e) ~~is the source for this funding~~.

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ber 1 of each year for the fiscal year ending the previous June 30, *using a form supplied by the department*:

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

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

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7569A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

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

This amendment provides for an increase in the eligible percentage amounts of reimbursement allowable within the rule for additional fuel costs incurred by Board of Regents institutions through the use of tire-derived fuel in generating heat, electricity, or power on a British thermal unit (Btu) equivalency basis.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary as this amendment will provide additional reimbursement funds to the Board of Regents institutions, allowing the Regents to more efficiently and economically assist with the state's program to dispose of waste tires in an environmentally sound manner.

The Environmental Protection Commission adopted this amendment on September 15, 1997.

This amendment is intended to implement Iowa Code section 455D.11E.

This amendment will become effective on November 12, 1997.

The following amendment is adopted.

Amend rule **567—216.7(455D)**, last paragraph, as follows:

Labor and equipment maintenance costs associated with blending tire-derived fuel with the institution's primary fossil fuel are also eligible costs. Reimbursement for these costs under this program shall not exceed ~~25~~ *75* percent of the difference between the purchase price of tire-derived fuel and the purchase price of the institution's primary fossil fuel on a price per million Btu equivalency basis that is calculated by the institution pursuant to this rule.

[Filed Without Notice 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7547A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 1997 Iowa Acts, House File 597, section 7, subsection 2, and House File 715, section 3, subsection 5, and section 37, the Department of Human Services hereby amends Chapter 9, "Public Records and Fair Information Practices," Chapter 41, "Granting Assistance," and Chapter 95, "Collections," appearing in the Iowa Administrative Code.

These amendments implement the following changes to the Family Investment Program (FIP) which were mandated by the Seventy-seventh General Assembly:

- Second cousins are added to the list of persons who can qualify as specified relatives for FIP.

Under current rules, a person who is a second cousin to the dependent child does not qualify for FIP assistance for the child regardless of the child's needs or circumstances. A second cousin would have to be approved for foster care if cash assistance were needed to care for the child. Adding second cousins to the list of specified relatives gives a family another option about where to place their child in an emergency situation, and lessens the need for foster care assistance.

Persons who are second cousins to a dependent child may qualify as specified relatives and may receive FIP on behalf of the child. However, due to the "delinking" of Medicaid from FIP, Medicaid must continue to use the FIP policies that were in place as of July 16, 1996, which did not include second cousins as a specified relative. As a result, even though the child and second cousin, if needy, may qualify for FIP, Medicaid eligibility will have to be established on some other basis. In most cases, the child would qualify under the Child Medical Assistance Program. The second cousin would have to be aged, blind, disabled, under the age of 21, pregnant, or the parent of a dependent child to qualify.

- The requirement is eliminated that the first $50 of assigned, current monthly child support collected by the Department in any given month be paid to the FIP recipient. Applicants who are approved for FIP on or after July 1, 1997, will no longer get the payment, called "rebate," even if the effective date of FIP assistance is before July 1, 1997. However, FIP recipients who are receiving assistance on June 30, 1997, will continue to get the rebate until their FIP eligibility stops. They will not get the rebate should they later reapply and be approved for FIP.

Whether or not a rebate is paid to a FIP household, the first $50 of current monthly child support is not counted when determining the household's FIP and Medicaid eligibility, the same as under current policy.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The original concept of the $50 rebate was believed to encourage parents on FIP to cooperate with the state in locating the absent parent, and establishing and enforcing child support obligations. The rebate was also viewed as a way to provide additional income to public assistance families, especially in states with low AFDC payment standards. However, states have not generally realized increased cooperation as a result of the rebate payment. This may be attributed to the fact that payment of the rebate is contingent on child support that the absent parent actually pays rather than on the FIP parent's cooperation with the state. Also, noncooperation by the FIP parent is already addressed via the sanction process that is applied to the household in that instance.

With the enactment of Public Law 104-193, the Personal Responsibility and Work Opportunity Act of 1996, states are no longer receiving federal financial participation for child support rebates. Iowa would have to use 100 percent state funds to continue rebate payments to FIP participants.

- School attendance requirements are implemented for FIP children who have not completed sixth grade. The provisions apply to both applicant and recipient households when there is a parent in the home or another specified relative who is included in the FIP grant. The provisions do not apply when the FIP child is living in a nonparental home and the specified relative is not included in the grant.

The provisions include that, as a condition for eligibility, parents in the home or other specified relatives on the grant must give the Department written authorization for the release of information to the school truancy officer regarding the FIP status of a child aged 5 through 13 who is at risk of being deemed truant, and also for the receipt of information from the school truancy officer regarding the child's school attendance. The authorization for release of information stays in effect until the FIP child turns 14 years of age. Failure to provide the required authorization as specified results in FIP denial or cancellation. However, FIP assistance shall not be denied or canceled prior to January 1, 1998, for failure to return a signed authorization form.

The portion of the rule requiring the Department to obtain written authorizations for release of information to and from the schools is effective July 1, 1997. In accordance with the legislation, between July 1 and December 31, 1997, the Department will contact all FIP recipient households that include a parent or other specified relative on the grant to obtain the written releases. The remaining school attendance provisions below take effect January 1, 1998.

Beginning January 1, 1998, the school truancy officer will contact the Department when a FIP child who has not completed sixth grade is at risk of being deemed truant. The Department is responsible for contacting the child's parent or other specified relative on the grant to participate in an attendance cooperation meeting. Members to participate in the meeting may include the FIP child and other pertinent parties but must include the child's parent or other specified relative on the grant, the Department representative and the truancy officer. The purpose of the meeting is to determine the cause of the child's nonattendance and to arrive at a written agreement for resolving the problem.

If the parties fail to enter an attendance cooperation agreement, or the terms of the agreement are violated by the FIP household, or the parent or other specified relative on the FIP grant fails to participate in the attendance cooperation meeting without good cause and the truancy officer confirms that the child still meets the conditions for being deemed truant, then the FIP child shall be deemed truant and the household shall be subject to sanction.

When the Department receives written notification from a school truancy officer that a FIP child who has not completed the sixth grade, whose parent is in the home or specified relative is included in the grant, is deemed to be truant as defined in the rules, the household's net FIP cash grant is subject to a 25 percent sanction.

The effect of the truancy sanction is illustrated in the following example:

$ 426.00	FIP payment standard for 3 persons
- 100.50	Countable income
$ 325.50	Deficit before sanction
- 81.37	Truancy sanction (25% of $325.50)
$ 244.13	Deficit after sanction
$ 244.00	Warrant amount (rounded)

The 25 percent sanction amount applies even if more than one child in the FIP household is deemed to be truant. The sanction remains in effect until the Department receives written notification from the school truancy officer that the nonattendance issue of each one of the FIP children in the household is resolved.

The school attendance provisions apply to FIP children in a public or an accredited nonpublic school who have not completed sixth grade. They do not apply to children who are receiving competent private instruction.

Iowa's continuing welfare reform efforts place great emphasis on public assistance families taking personal responsibility for achieving self-sufficiency and impose stricter consequences for noncompliance. The school attendance provisions are in keeping with those objectives. Education is a critical element to a person's success and self-sufficiency. Ensuring school attendance and developing good attendance habits early on maximize available educational opportunities for Iowa's young children.

In view of the five-year limit on FIP assistance, it is imperative that families seize every opportunity that will enhance their future marketable skills and lead them out of poverty.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments were previously Adopted and Filed Emergency and published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7321A**. Notice of Intended Action to solicit comments on that submission was published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7320A**.

Eight public hearings were held around the state. Four persons attended and written comments were received. All comments concerned the school attendance portion of these amendments.

The following revisions were made to the Notice of Intended Action in response to the comments received from advocates, legislators, and other concerned parties:

Subrule 9.10(20) was revised to clarify that the Department shall develop a database listing FIP children aged 5 through 13 for whom the Department has received a signed release to do so from parents in the home or specified relatives who are included in the FIP grant. Only truancy officers who have been given security clearance by the Department may access the database to verify the FIP status of a child who has not completed sixth grade and who is at risk of being deemed truant. The design of the database is still pending but will contain only the minimum information that is necessary to identify if the child is a member of a FIP ap-

plicant or recipient family. To the extent feasible, access will be further restricted by geographical area.

Subrule 41.25(8) was revised regarding the reference to school officials to clarify that the rules are referring to truancy officers.

Subrule 41.25(8), paragraph "a," was revised as follows:

- Only those applicant or recipient households, with a parent in the home or a specified relative who is included in the FIP grant, who have a child aged 5 through 13 are required to provide a signed authorization.
- A signed authorization covers each FIP child aged 5 through 13 who is in the home on the date the release is signed. A new release is required when a FIP child turns the age of 5 after the date a release was signed, or for additional FIP children aged 5 through 13 who join the FIP eligible group after a release was signed.
- A signed authorization remains in effect until the FIP child reaches the age of 14. In addition, signed releases the Department obtained from July 1, 1997, until December 1, 1997, remain in effect for FIP children aged 5 through 13 who were in the home on the date the county Department office received the form.
- Language is clarified that only the FIP child's parents in the home or other caretaker relative whose needs are included in the grant must sign Form 470-3383, Authorization to Exchange Information With Your Child's School.
- Even though FIP applicants and recipients were asked to sign the release beginning July 1, 1997, FIP assistance shall not be denied or canceled prior to January 1, 1998, for failure to return a signed release.

Subrule 41.25(8), paragraph "b," was revised to change the requirement that, in two-parent families, both parents participate in the attendance cooperation meeting. While attendance by both parents is encouraged, only one parent is required to attend the meeting. This change allows for consideration of a parent's work schedule or other circumstances that may prevent both parents from attending the meeting, such as illness or other family emergencies, while not delaying the parties' efforts at resolving the child's nonattendance matter. Paragraph "b" was further revised to clarify that a FIP family may invite other persons to the attendance cooperation meeting, and also to list specific parties that the Department's representative or the truancy officer may invite to participate in the meeting.

Subrule 41.25(8), paragraph "c," was revised to clarify that, in the event only one of the two parents in the home is able to attend the meeting, both parents are still required to sign the school attendance agreement. Requiring only one of the two parents' signatures would render the agreement void should the parent who signed the agreement leave the home.

The Department is not changing the rule requiring both parents in the home to sign the release or the cooperation agreement. Iowa Code subsection 4.1(17) states: "Unless otherwise specifically provided by law, the singular includes the plural." 1997 Iowa Acts, House File 597, did not specifically provide an override of the rule of statutory construction prescribed by Iowa Code subsection 4.1(17).

Subrule 41.25(8), paragraph "e," was revised to allow for good cause when a parent or other caretaker relative who is required to participate in the attendance cooperation meeting fails to attend. This will avoid imposing a truancy sanction on the family for reasons that are beyond the family's control, such as illness, family emergencies or other unforeseen circumstances.

These amendments are intended to implement 1997 Iowa Acts, Senate File 516, section 2, subsection 12, paragraph "n," and section 34, subsection 1; House File 597; and House File 715, section 3, subsection 5.

These amendments shall become effective December 1, 1997, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 441—9.10(17A,22) by adding the following new subrule:

9.10(20) School attendance. Effective January 1, 1998, the department may release or make available to a school truancy officer, as defined in Iowa Code section 299.12, the FIP status of a child who has not completed sixth grade and who is at risk of becoming truant. The department shall only make the child's FIP status available to the truancy officer upon receipt of a signed authorization to do so from the child's parent in the home or the specified relative who is included in the FIP grant. The department shall develop a database that only truancy officers, who have received security clearance from the department, may access to verify the FIP status of a child who has not completed sixth grade and who is at risk of being deemed truant. In order to implement the provisions of 441—subrule 41.25(8), the department shall limit the database to children aged 5 through 13 who are part of the FIP eligible group. The database shall contain only the minimum information needed to identify if the child is a member of a family investment program applicant or recipient family. To the extent feasible, access to the database shall be further restricted by geographical area or region.

ITEM 2. Amend rule 441—41.22(239) as follows:

Amend subrule **41.22(3)**, paragraph **"a,"** as follows:

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

Father—adoptive father.

Mother—adoptive mother.

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

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

Great-grandfather—great-great-grandfather.

Great-grandmother—great-great-grandmother.

Stepfather, but not his parents.

Stepmother, but not her parents.

Brother—brother-of-half-blood—stepbrother—brother-in-law—adoptive brother.

Sister—sister-of-half-blood—stepsister—sister-in-law—adoptive sister.

Uncle—aunt, of whole or half blood.

Uncle-in-law—aunt-in-law.

Great uncle—great-great-uncle.

Great aunt—great-great-aunt.

First cousins—nephews—nieces.

Second cousins, meaning the son or daughter of one's parent's first cousin.

Amend subrule **41.22(7)**, paragraph **"b,"** as follows:

b. The first $50 of assigned support collected periodically which represents monthly support payments made by a legally responsible individual ~~shall be~~ *when* paid to the client ~~without affecting~~ *in accordance with 441—subrule 95.3(1) shall not affect* either eligibility for assistance or the amount of the assistance grant during the month.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend the implementation clause following rule **441—41.22(239)** to read as follows:

This rule is intended to implement Iowa Code ~~sections 239.1, 239.2, 239.3, 239.5 and~~ *section* 249A.4 *and 1997 Iowa Acts, Senate File 516, and House File 715, section 3, subsection 5.*

ITEM 3. Amend rule 441—41.25(239) by adding the following new subrule:

41.25(8) School attendance requirements.

a. The department shall require an applicant for or recipient of family investment program assistance who is the child's parent in the home or other specified relative whose needs are included in the grant payable to the child's family to cooperate with efforts to ensure children receiving family investment program assistance complete educational requirements through the sixth grade. As a condition of eligibility, an applicant or recipient, who is the child's parent in the home or specified relative whose needs are included in the FIP grant, shall provide written authorization for release of information to a school truancy officer concerning the receipt of assistance and for release of information by a school truancy officer concerning the child's compliance with attendance requirements on Form 470-3383, Authorization to Exchange Information With Your Child's School.

A signed authorization is required for any child in the home aged 5 through 13 who is a member of the FIP eligible group. The same signed authorization shall cover all FIP children in the home who are aged 5 through 13 on the date the release is signed. An additional signed release is required when a FIP child turns the age of 5 after the date a release was signed or when another child aged 5 through 13 joins the FIP eligible group after the date the release was signed. Signed releases obtained by the department from July 1, 1997, to December 1, 1997, remain in effect for all FIP children aged 5 through 13 who were in the home when the release was received by the county department office.

When both parents are in the home, both shall sign the release. When a minor parent and the minor's child receive family investment program assistance on the adult parent's case, or on the case of a specified relative whose needs are included in the assistance grant, the adult parent or specified relative shall sign the release. The signed release shall stay in effect until the FIP child turns 14 years of age. A new release is required when the household reapplies for family investment program and a new application is needed to determine the household's eligibility. Assistance shall be denied or canceled when the household fails to supply a signed release within the time frames described at 441—subrules 40.24(1) and 40.27(4). However, FIP assistance shall not be denied or canceled prior to January 1, 1998, for failure to return a signed release. The requirements in this paragraph apply to children in a public school or an accredited nonpublic school who have not completed sixth grade. They do not apply to children who are receiving competent private instruction in accordance with Iowa Code chapter 299A.

b. If a child of a family applying for or receiving family investment program assistance is not in compliance with the attendance requirements established under Iowa Code section 299.1, and has not completed educational requirements through the sixth grade, and the school has used every means available to ensure the child does attend, the truancy officer, as defined at Iowa Code section 299.12, shall provide written notification to the department. The department shall then initiate contact with the child's parent or other specified relative to participate in an attendance cooperation meeting. The parties to the attendance cooperation meeting may include the child, and shall include the child's parent in the home or specified relative whose needs are included in the child's assistance grant, the truancy officer and a representative of the department. When both parents of the child live in the child's home, both shall be encouraged to attend, but only one parent is required to attend. The department's representative or the truancy officer may invite other parties deemed appropriate to participate in the attendance cooperation meeting, such as other school officials, the county attorney or designee, or a designee of the juvenile court. The family may also invite another family member, a friend, advocate, or legal representative to the meeting.

c. The purpose of the attendance cooperation meeting is for the participating parties to attempt to ascertain the cause of the child's nonattendance, to cause the parties to arrive at an agreement addressing the child's attendance, and to initiate referrals to any services or counseling that the parties believe to be appropriate under the circumstances. The terms agreed to shall be reduced to writing in Form 470-3391, School Attendance Cooperation Agreement, and signed by the parties to the agreement. In two-parent families, both parents shall sign the agreement even if only one parent attends the meeting. Each party signing the agreement shall receive a copy of the agreement, which shall set forth the cause identified for the child's nonattendance and future responsibilities of each party.

d. If the parties to an attendance cooperation meeting determine that a monitor would improve compliance with the attendance cooperation agreement, the parties may designate a person to monitor the agreement. The monitor shall be a designee of the department. The monitor may be a volunteer if the volunteer is approved by all parties to the agreement and receives a written authorization for access to confidential information and for performing monitor activities from the child's parent or specified relative. A monitor shall contact parties to the attendance cooperation agreement on a periodic basis as appropriate to monitor the performance of the agreement.

e. If the parties fail to enter into an attendance cooperation agreement, or the child's parent or specified relative acting as a party violates a term of the attendance cooperation agreement or fails to participate in an attendance cooperation meeting without good cause, and the truancy officer confirms that the child still meets the conditions for being deemed truant, then the child shall be deemed to be truant.

The parent or specified relative shall be considered to have good cause when failing to attend the meeting for reasons beyond the person's control, such as illness, family emergencies or other unforeseen circumstances.

f. If the department receives written notification from a school truancy officer under 1997 Iowa Acts, House File 597, section 5, that a child receiving family investment program assistance is deemed to be truant, the child's family shall be subject to sanction as provided in paragraph "g." The sanction shall continue to apply until the department receives written notification from the school truancy officer of any of the following:

(1) The child is complying with the attendance policy applicable to the child's school.

(2) The child has satisfactorily completed educational requirements through the sixth grade.

(3) The child's school has determined there is good cause for the child's nonattendance and the school withdraws the written notification.

(4) The child is no longer enrolled in the school for which the written notification was provided and the child's family

HUMAN SERVICES DEPARTMENT[441](cont'd)

demonstrates that the child is enrolled in and is attending another school or is otherwise receiving equivalent schooling as authorized under state law.

g. The sanction shall be a deduction of 25 percent from the net cash assistance grant amount payable to the child's family prior to any deduction for recoupment of a prior overpayment. If more than one child is deemed to be truant, the sanction shall continue to apply until the department receives written notification from the school truancy officer, as described in paragraph "f," concerning each child.

Amend the implementation clause following rule 441—41.25(239) to read as follows:

This rule is intended to implement ~~Iowa Code sections 239.2 and 239.5~~ *1997 Iowa Acts, Senate File 516, and House File 597.*

ITEM 4. Amend rule 441—41.27(239) as follows:

Amend subrule 41.27(6), paragraph "u," as follows:

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

Amend subrule 41.27(9), paragraph "d," as follows:

d. The third digit to the right of the decimal point in any computation of income, hours of employment and work expenses for care, as defined in 41.27(2)"b," shall be dropped. *This includes the calculation of the amount of a truancy sanction as defined in subrule 41.25(8).*

Amend the implementation clause following rule 441—41.27(239) to read as follows:

This rule is intended to implement ~~Iowa Code sections 239.2, 239.5 and 239.6~~ *1997 Iowa Acts, Senate File 516, and House File 715, section 3, subsection 5.*

ITEM 5. Amend rule 441—95.3(252B) as follows:

Amend subrule 95.3(1), introductory paragraph, as follows:

95.3(1) Date of collection. Obligees and dependent children who are recipients of family investment program assistance are ~~entitled to~~ *eligible to receive* the first $50 of the assigned current monthly support collected in a given month, hereinafter referred to as the support rebate, *only as provided in paragraph 95.3(1)"d."* ~~Entitlement~~ *If eligible for a support rebate, entitlement* to a support rebate and other child support distributions shall be based on the date of collection. The date of collection shall be determined as follows:

Further amend subrule 95.3(1) by adding the following new paragraph "d":

d. Recipients of family investment assistance who are approved to receive assistance prior to July 1, 1997, shall continue to be eligible to receive support rebates until they are no longer eligible for the family investment program, but shall not be eligible to receive support rebates upon reapplication and subsequent receipt of family investment program assistance. The child support recovery unit shall authorize and terminate payment of support rebates based upon eligibility and reapplication determinations by the family investment program.

Amend subrule 95.3(2) as follows:

95.3(2) ~~Less~~ *Subject to the restrictions in subrule 95.3(1), a support rebate of less* than $50 shall be paid to ~~an aid to dependent children~~ *a family investment program* recipient if the amount of assigned support collected in a month is less than $50 or if the amount of the monthly support obligation is less than $50.

Amend subrule 95.3(4) as follows:

95.3(4) ~~Payment~~ *If a recipient is entitled to a support rebate, payment* of up to $50 in assigned support~~, to the aid to dependent children~~ *to the family investment program* recipient~~,~~ shall occur in the month *in which the support collected equals or exceeds $50 of assigned support. If less than $50 is collected, payment shall be made in the month* following the month in which the monthly support obligation is applied to the child support account.

Amend the implementation clause following rule 441—95.3(252B) to read as follows:

This rule is intended to implement Iowa Code sections 252B.3, 252B.4, and 252B.11 *and 1997 Iowa Acts, House File 715, section 3, subsection 5.*

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7548A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby amends Chapter 75, "Conditions of Eligibility," and Chapter 76, "Application and Investigation," and rescinds Chapter 86, "Medically Needy," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments on September 16, 1997. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on July 16, 1997, as ARC 7364A. Eight public hearings were held around the state. One person attended. He had no comments, only questions.

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

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

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

Medicaid eligibility determinations regardless of what changes may occur in FIP.

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

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

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

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

The following revision was made to the Notice of Intended Action:

Subrule 75.57(7) was revised by adding a new paragraph "ae" to exempt income from the pilot self-sufficiency grants program and the pilot diversion program when determining eligibility for FMAP-related Medicaid to incorporate changes Adopted and Filed Emergency effective October 1, 1997. Paragraph "ae" reads as follows:

ae. Moneys received through the pilot self-sufficiency grants program or through the pilot diversion program.

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

These amendments shall become effective December 1, 1997.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Chs 75 and 76; rescind Ch 86] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7364A**, IAB 7/16/97.

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

[For replacement pages for IAC, see IAC Supplement 10/8/97.]

ARC 7549A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4; 1996 Iowa Acts, chapter 1213, section 25, subsection 13, and section 49; and 1997 Iowa Acts, Senate File 542, section 10, subsection 6, and House File 715, section 5, subsection 12, section 28, subsections 11 and 13, and section 37, the Department of Human Services hereby amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

These amendments implement the following changes to the Medicaid program mandated by the Seventy-seventh General Assembly:

- A telemedicine pilot project is implemented. Payment for consultations on covered services done through the electronic transfer of medical information by interactive audiovisuals is available pursuant to Medicare-funded telemedicine waiver program guidelines to those Medicaid providers participating in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department. Payment for telecommunication expenses and associated costs for the teleconsultive services is available to medical institutions participating in Medicaid and in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department.

Telemedicine is an evolving science which uses advanced telecommunications capabilities to disseminate medical expertise to areas where needed medical care is locally unavailable. The Iowa Communications Network (ICN) and other telecommunications systems are in place and provide the opportunity to transfer the high quality images and audio signals necessary for telemedical applications.

Three Iowa telemedicine projects have established connectivity to the ICN in 44 sites in 37 counties.

The program will be piloted for three years to enable the Department to assess the effects of the new mechanism of health care delivery on access and cost. Careful and close monitoring during the pilot project period will position the Department to make informed decisions concerning expanding, reducing, or revising the program for future application. Regular reports will be made to the General Assembly.

- The reimbursement rate for hospitals is increased by 2.8 percent.
- The reimbursement rate for skilled nursing care providers is increased by 3.3 percent. Hospital-based skilled nursing care providers are subject to the maximum payment rate at the sixtieth percentile of costs of all hospital-based skilled facilities, or $233 per day. Freestanding skilled nursing care providers are subject to the maximum payment rate at the sixty-ninth percentile of costs of all freestanding skilled facilities, or $123.54 per day.
- The reimbursement rate for psychiatric medical institutions for children is increased by 3 percent to a maximum of $131.12 per day.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Revisions are made to the methodology under which hospitals with graduate medical education are reimbursed for the direct and indirect costs of those programs and to the methodology by which hospitals serving a disproportionate share of Medicaid recipients are reimbursed for costs associated with doing so.
- The financial and statistical report used by intermediate care facilities to report their costs is revised. The Department was directed to revise the form to incorporate recommendations of a study committee convened to define direct health care costs in response to direction from the Seventy-sixth General Assembly. The revisions include the addition of a category labeled "Patient Care Services" which is subdivided into the subcategories of "Direct Patient Care Costs" and "Support Care Costs." Costs associated with food and dietary wages are to be included in the "Support Care Costs" subcategory.
- The maximum reimbursement rate for nursing facilities is increased.

The Seventy-sixth General Assembly in 1996 Iowa Acts, chapter 1213, section 25, subsection 1, paragraph "g," directed that if funds were available, the maximum reimbursement rate for nursing facilities should be adjusted effective January 1, 1997. It has now been determined that funding is available to make this adjustment in the maximum reimbursement rate effective January 1, 1997. The state cost for providing this increase for the last six months of the fiscal year is estimated at $2,149,218.

The Seventy-seventh General Assembly in 1997 Iowa Acts, House File 715, section 28, subsection 1, paragraph "f," directed that the maximum reimbursement rate for nursing facilities should be adjusted effective July 1, 1997. The state cost for providing this increase for the 1998 fiscal year is estimated at $5,900,219.

The maximum Medicaid nursing facility per diem rate is increased from $66.80 to $69.32 effective January 1, 1997. The rate is increased from $69.32 to $71.70 effective July 1, 1997.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments were previously Adopted and Filed Emergency and published in the July 2, 1997, Iowa Administrative Bulletin as ARC 7325A. Notice of Intended Action to solicit comments on that submission was published in the July 2, 1997, Iowa Administrative Bulletin as ARC 7324A.

The following revisions were made to the Notice of Intended Action in response to public comments:

Subrules 78.1(24) and 78.3(19) regarding teleconsultive services provided by physicians and hospitals were deleted and a new rule 441—78.45(249A) was adopted. The rule has been broadened to include all Medicaid-eligible providers and medical institutions participating in a federally funded telemedicine pilot program. Language was added to define the Department's intent to generally follow Medicare's guidelines for service provided under the telemedicine pilot programs and language was revised to allow more flexibility in billing. In addition, providers are required to enter into a billing instruction and data collection agreement with the Department to give specific billing instructions per the Medicare guidelines and require the programs to submit data necessary for the Department to report back to the General Assembly as required on the access and cost of telemedicine.

Subrule 79.1(5), paragraph "y," subparagraph (1), numbered paragraph "1," subparagraph (3), numbered paragraph "1," and subparagraph (5), numbered paragraph "1," were revised to correct a possible inequitable distribution of funds based upon the uneven periodicity of claims filing and service dates in response to comments from the University of Iowa.

These amendments are intended to implement Iowa Code section 249A.4; 1996 Iowa Acts, chapter 1213, section 25, subsection 1, paragraph "g"; and 1997 Iowa Acts, Senate File 542, section 10, subsection 6, and House File 715, section 5, subsection 12, section 28, subsection 1, paragraphs "a," "c," and "f," and subsections 11 and 12.

These amendments shall become effective December 1, 1997, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 78 as follows:
Rescind subrules **78.1(24)** and **78.3(19)**.
Adopt the following **new** rule:

441—78.45(249A) Teleconsultive services.

78.45(1) Covered services. Payment for consultations on covered services done through the electronic transfer of medical information by interactive audiovisuals is available pursuant to Medicare-funded telemedicine waiver program guidelines to those Medicaid providers participating in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department.

78.45(2) Expenses and associated costs. Payment for telecommunication expenses and associated costs for teleconsultive services covered under subrule 78.45(1) is available to medical institutions participating in Medicaid and in a federally funded telemedicine waiver program who have entered into a billing instruction and data collection agreement with the department.

ITEM 2. Amend rule 441—79.1(249A) as follows:
Amend subrule **79.1(2)** as follows:
Amend the provider categories of Hospitals (Inpatient), Hospitals (Outpatient), Nursing facilities, and Psychiatric medical institutions for children (Inpatient), as follows:

Provider category	Basis of reimbursement	Upper limit
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect ~~6/30/95~~ *6/30/97* increased by ~~4.2%~~ *2.8%*
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 78.31(1)"a" to "f." See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) in effect on ~~6/30/95~~ *6/30/97* increased by ~~4.2%~~ *2.8%*
	Fee schedule for providers listed at 78.31(1)"g" to "n." See 79.1(16)	Rates in effect on ~~6/30/95~~ *6/30/97* increased by ~~4.2%~~ *2.8%*

HUMAN SERVICES DEPARTMENT[441](cont'd)

Nursing facilities:		
1. Nursing facility care	Prospective reimbursement. See 81.10(1) and 441—81.6(249A)	Seventieth percentile of facility costs as calculated from ~~6/30/95~~ *6/30/97* cost reports
2. Skilled nursing care providers, including:		
Hospital-based facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on ~~6/30/95~~ *6/30/97* inflated by ~~4.6%~~ *3.3%* subject to maximum payment rate at the sixtieth percentile of costs of all hospital-based skilled facilities
Freestanding facilities	Prospective reimbursement. See 79.1(9)	Facility base rate per diems used on ~~6/30/95~~ *6/30/97* inflated by ~~4.6%~~ *3.3%* subject to maximum payment rate at the sixty-ninth percentile of costs of all freestanding skilled facilities
Psychiatric medical institutions for children		
(Inpatient)	Prospective reimbursement	Reimbursement rate for provider in effect ~~6/30/93~~ *6/30/97* plus ~~2%~~ *3%* to a maximum of ~~$127.29~~ *$131.12* per day

Amend subrule **79.1(5)**, paragraph **"a,"** as follows:

Amend the definitions of "Direct medical education costs," "Disproportionate share payment," and "Final payment rate" as follows:

"Direct medical education costs" shall mean an add-on to the blended base amount which shall compensate for costs associated with direct medical education. Costs associated with direct medical education are determined from the hospital base year cost reports, and are inflated and case-mix adjusted. *On or after July 1, 1997, the direct medical education payment shall be directly reimbursed from the graduate medical education and disproportionate share fund and shall not be added to the reimbursement for claims with discharge dates on or after July 1, 1997.*

"Disproportionate share payment" shall mean an add-on to the blended base amount which shall compensate for treatment of a disproportionate share of poor patients. *On or after July 1, 1997, the disproportionate share payment shall be directly reimbursed from the graduate medical education and disproportionate share fund and shall not be added to the reimbursement for claims with discharge dates on or after July 1, 1997.*

"Final payment rate" shall mean the aggregate sum of the five components (the blended base amount, capital costs, direct medical education, disproportionate share and indirect medical education) that, when added together, form the final dollar value used to calculate each provider's reimbursement amount when multiplied by the DRG weight. These dollar values are displayed on the rate table listing. *On or after July 1, 1997, the direct and indirect medical education costs and the disproportionate share costs shall be directly reimbursed through the graduate medical education and disproportionate share fund and shall not be included in the final payment rate or displayed in the rate table listing.*

Further amend subrule **79.1(5)**, paragraph **"a,"** by adding the following **new** definition in alphabetical order.

"Graduate medical education and disproportionate share fund" shall mean a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the direct and indirect costs associated with the operation of graduate medical education programs and the costs associated with the treatment of a disproportionate share of poor, indigent, nonreimbursed or lowly reimbursed patients for inpatient services.

Amend subrule **79.1(5)**, paragraph **"b,"** introductory paragraph, as follows:

b. Determination of final payment rate amount. The hospital DRG final payment amount reflects the sum of inflation adjustments to the blended base amount plus add-ons for capital costs, medical education costs, disproportionate share payment, and indirect medical education. This blended base amount plus add-ons is multiplied by the set of Iowa-specific DRG weights to establish a rate schedule for each hospital. *For payments made to providers for claims with dates of discharge on or after July 1, 1997, the final payment rate shall not contain the add-on amounts for direct or indirect medical education or for disproportionate share payments.* Federal DRG definitions are adopted except as provided below:

Amend subrule **79.1(5)**, paragraph **"e,"** subparagraphs **(2)**, **(3)**, and **(4)**, as follows:

(2) Direct medical education costs. Direct medical education costs are included in the rate table listing if applicable to the provider, and added to the blended base amount plus other add-ons prior to setting the final payment rate *if the date of the patient's discharge is prior to July 1, 1997.* The amount added on reflects Iowa Medicaid's average cost per discharge for hospital-specific direct medical education adjusted for case-mix. This add-on is determined from the base year cost report and is adjusted to reflect inflation. *If the date of discharge is on or after July 1, 1997, the costs for direct medical education are reimbursed according to policy at paragraph "y" from the graduate medical education and disproportionate share fund.*

(3) Disproportionate share adjustment. Two separate and distinct groups are identified for the calculation of routine or

supplemental disproportionate share payments. The first group eligible for routine disproportionate share payments includes all hospitals which qualify under the following rules without regard to the facility's status as a teaching facility or bed size. The second group eligible for supplemental disproportionate share payments includes all in-state hospitals qualifying under either the low-income utilization rate or the Medicaid utilization rate which are state-owned, acute-care hospitals, and which have greater than 500 beds. In-state hospitals which qualify for both distinct groups may receive payment under both the routine and supplemental disproportionate share methodologies. However, supplemental disproportionate share payments will be made only for claims that have dates of discharge on or after October 1, 1992.

Compensation for routine disproportionate share payments for indigent patients is included in the rate table listing if applicable to the provider and *the claim has a date of discharge before July 1, 1997. This amount* is added to the blended base amount plus add-ons prior to setting the final payment rate. Compensation for supplemental disproportionate share payments is calculated and paid monthly. Hospitals qualify for disproportionate share payments based on information contained in the hospital's available ~~1991~~ *1995* submitted Medicaid cost report, and other supporting schedules. Either routine or supplemental disproportionate share payments are determined when the hospital's low-income utilization rate, as defined by the ratio of gross billings for all Medicaid, bad debt, and charity care patients to total billings for all patients, is 25 percent or greater. Gross billings do not include cash subsidies received by the hospital for inpatient hospital services except as provided from state or local governments. Hospitals also qualify for either routine or supplemental disproportionate share payments when the hospital's inpatient Medicaid utilization rate, defined as the number of total Medicaid days, both in-state and out-of-state, and Iowa state indigent patient days divided by the number of total inpatient days for both in-state and out-of-state recipients, exceeds one standard deviation from the statewide average Medicaid utilization rate. Children's hospitals, defined as hospitals with inpatients predominantly under 18 years of age, receive twice the percentage of inpatient hospital days attributable to Medicaid patients.

To qualify for routine or supplemental disproportionate share payments, the hospital must also have at least two obstetricians who have staff privileges at the hospital and who have agreed to provide obstetric services to persons who are entitled to Medicaid for obstetric services. In the case of a hospital located in a rural area as defined in Section 1886 of the Social Security Act, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

Starting July 1, 1993, the routine disproportionate share payment add-on is established as a minimum payment of 1.00 percent of the hospital's blended base cost per discharge plus add-ons *if the claim has a discharge date prior to July 1, 1997.* The scale increases 1.00 percent for each standard deviation above the mean Medicaid utilization rate for hospitals receiving Medicaid payments in the state. The standard deviation percentage rates will be increased to a maximum of 2.50 percent per standard deviation off the mean if additional federal funds for disproportionate share become available under the cap on disproportionate share payments imposed under Public Law 102-234. Disproportionate share hospitals will be notified of any change in disproportionate share payment rates within ten working days after the change.

The supplemental disproportionate share payment is established as an additional payment of 166 percent of the hospital's total calculated reimbursement for a case. For this purpose, total calculated reimbursement includes any routine disproportionate share payment. Hospitals which are state-owned, acute-care facilities with over 500 beds may receive both the routine disproportionate share payment and the supplemental disproportionate share payment. The supplemental disproportionate share payment will be paid on a monthly cycle using the same paid inpatient DRG claims to calculate the reimbursement amount.

Hospitals that qualify for routine disproportionate share payments under both the low-income utilization and the Medicaid utilization guidelines shall qualify for routine disproportionate share payment under the Medicaid utilization payment scale.

Hospitals that qualify for routine disproportionate share payments under the low-income utilization guidelines and do not qualify under the Medicaid utilization guidelines shall be paid the minimum payment as established under the Medicaid utilization payment scale.

Out-of-state hospitals serving Iowa Medicaid patients qualify for routine disproportionate share payments based on their state's Medicaid agency's calculation of the Medicaid inpatient utilization rate. Payment is through the Iowa Medicaid utilization payment scale for routine disproportionate share payment, based on the number of standard deviations greater than the hospital's own state average Medicaid utilization rate. Out-of-state hospitals may not qualify for supplemental disproportionate share payments.

In compliance with Medicaid Voluntary Contribution and Provider Specific Tax Amendments (Public Law 102-234) and 1992 Iowa Acts, chapter 1246, section 13, the total routine and supplemental disproportionate share payments cannot exceed the amount of the federal cap expressed under Public Law 102-234, and supplemental disproportionate share payments cannot exceed the lesser of (1) the applicable state appropriation or (2) the federal cap minus the routine disproportionate share payments.

(4) Indirect medical education costs. Recognition for indirect medical education costs incurred by hospitals is made through an add-on to the blended base rate cost per discharge *for claims with dates of discharge before July 1, 1997.* Hospitals qualify for indirect medical education payments when they receive a direct medical education add-on payment from Iowa Medicaid and qualify for indirect medical education payments from Medicare. For those qualifying hospitals, two distinct classes of indirect medical education add-on payments shall be established. The add-on payment for the first class *(routine)* is determined by qualifying for an indirect medical education payment from Medicare without regard to the individual components of the specific hospital's teaching program, state ownership, or bed size. The add-on payment for the first class shall be determined by multiplying the hospital's Medicaid indirect medical education factor by the sum of 50 percent of the statewide average base cost per discharge and 50 percent of the statewide average capital cost per discharge. The second class *(supplemental)* is determined by qualifying for an indirect medical education payment from Medicare, being an Iowa state-owned hospital with greater than 500 beds, and having eight or more separate and distinct residency specialty or subspecialty programs recognized by the American College of Graduate Medical Education. The add-on payment for the second

class shall be paid monthly and shall be determined by multiplying the hospital's Medicaid indirect medical education factor by the sum of five times the statewide average base cost per discharge and five times the statewide average capital cost per discharge. The Medicaid indirect medical education factor is determined from the following equation:

$$\frac{(\text{residents} + \text{interns})}{(\text{beds})} \times 1.159$$

The number of interns, residents and beds is based on information contained in the hospital's Medicare cost report which will be updated when rebasing and recalibration are performed. A hospital may qualify to receive both classes of indirect medical education payments.

Amend subrule **79.1(5)**, paragraph **"m,"** as follows:

m. Payment to out-of-state hospitals. Payment made to out-of-state hospitals providing care to beneficiaries of Iowa's Medicaid program is equal to either the Iowa statewide average blended base amount plus the statewide average capital cost add-on, multiplied by the DRG weight, or blended base and capital rates calculated by using 80 percent of the hospital's submitted capital costs. For those hospitals which wish to submit a cost report no less than 120 days prior to rebasing using data for Iowa Medicaid patients only, that provider will receive a case-mix adjusted blended base rate using hospital-specific, Iowa-only Medicaid data and the Iowa statewide average cost per discharge amount. Capital costs will be reimbursed at either the statewide average rate in place at the time of discharge, or the blended capital rate computed by using submitted cost report data. Hospitals that qualify for disproportionate share payment based on the definition established by their state's Medicaid agency for the calculation of the Medicaid inpatient utilization rate will be eligible to receive disproportionate share ~~payments~~ *add-ons if the last date of service is prior to July 1, 1997, or disproportionate share payments according to paragraph "y" if the last date of services is on or after July 1, 1997.* If a hospital qualifies for reimbursement for the direct medical education or indirect medical education component under Medicare guidelines, it shall qualify for this add-on component for reimbursement purposes in Iowa *if the date of service is prior to July 1, 1997, or shall be reimbursed for those components according to paragraph "y" if the date of service is on or after July 1, 1997.* Hospitals which wish to submit the HCFA 2552 (or HCFA accepted substitute) cost report must do so within 60 days from the date of patient discharge to the state of Iowa's fiscal agent. Hospitals which elect to submit cost reports for the determination of blended rates must submit new reports on an annual basis within 90 days of the close of the hospital's fiscal year end. When audited, finalized reports become available from the Medicare intermediary, these should be submitted to the Iowa Medicaid fiscal agent.

Further amend subrule **79.1(5)** by adding the following **new** paragraphs **"y"** and **"z."**

y. Graduate medical education and disproportionate share fund. Payment shall be made to all hospitals qualifying for direct medical education, indirect medical education or disproportionate share payments directly from the graduate medical education and disproportionate share fund. The amount in the fund and distributions from the fund shall be calculated from the following components:

(1) Allocation for direct medical education. To determine the total amount of funding that will be allocated to the graduate medical education and disproportionate share fund for direct medical education, the department shall:

1. Sum all direct medical education payments using claims reimbursed to qualifying providers with dates of discharge from October 1, 1996, through March 31, 1997, and paid through June 30, 1997. These claims shall then be multiplied by two and statistically adjusted to fully annualize the amount of money to be placed in the fund for distribution and the total amount of computed reimbursement shall be allocated to the fund.

2. Sum all direct medical education payments using claims reimbursed to qualifying providers when those claims have been used as a basis for the calculation of capitation rates and reimbursement with any health maintenance organization (HMO) or other prepaid health plan with which the department has entered into a contract effective on or after July 1, 1997.

For each prepaid health plan, divide the total dollar reimbursement from claims by the number of member months applicable to the rate-setting methodology for the per member per month (PMPM) allocation to calculate the amount of reimbursement to be allocated to the fund that represents capitation rate reimbursement allocation for direct medical education. The direct medical education PMPM allocation shall then be multiplied by the total number of members enrolled in the plan for state fiscal year 1997, allocating that amount of money to the fund.

3. Trend the total allocation for direct medical education (which includes money for both the fee for service population and the capitated risk-based population, calculated under numbers "1" and "2" above) forward using annually appropriated legislative update factors and determine the total amount of money that shall be allocated to the graduate medical education and disproportionate share fund for direct medical education Medicaid reimbursement. No adjustments shall be made to this fund beyond appropriated amounts.

(2) Distribution of direct medical education. Distribution of the fund for direct medical education shall be on a quarterly basis beginning October 1, 1997, and shall be calculated by taking the previous fiscal year's percentage allocation of direct medical education reimbursement (based upon paid claims to qualifying hospitals) and multiplying that percentage by the amount in the fund for direct medical education.

If a hospital fails to qualify for the provision of medical education under Medicare regulations, the amount of money that could have been allocated to that hospital shall be removed from the total fund.

(3) Allocation for indirect medical education. To determine the total amount of funding that will be allocated for the graduate medical education and disproportionate share fund for indirect medical education, the department shall:

1. Sum all routine indirect medical education payments using claims reimbursed to qualifying providers with dates of discharge from October 1, 1996, through March 31, 1997, and paid through June 30, 1997. These claims shall then be multiplied by two and statistically adjusted to fully annualize the amount of money to be placed in the fund for distribution and the total amount of reimbursement shall be applied to the fund.

2. Sum all routine indirect medical education payments from claims made to qualifying providers when those claims have been used as a basis for the calculation of capitation rates and reimbursement with any HMO or other prepaid health plan with which the department has entered into a contract effective on or after July 1, 1997.

For each prepaid health plan, divide the total dollar reimbursement from claims by the number of member months applicable to the rate-setting methodology for the per member per month (PMPM) allocation to calculate the amount of

reimbursement to be allocated to the fund that represents capitation rate reimbursement allocation for routine indirect medical education. The indirect medical education PMPM allocation shall then be multiplied by the total number of members enrolled in the plan for state fiscal year 1997, allocating that amount of money to the fund.

3. Trend the total allocation for routine indirect medical education (which includes money for both the fee for service population and the capitated risk-based population, calculated under numbers "1" and "2" above) forward using annually appropriated legislative update factors and determine the total amount of money that shall be allocated to the graduate medical education and disproportionate share fund for indirect medical education Medicaid reimbursement. No adjustments shall be made to this fund beyond appropriated updates.

(4) Distribution of indirect medical education. Distribution of the fund for indirect medical education shall be on a quarterly basis beginning October 1, 1997, and shall be calculated by taking the previous fiscal year's percentage allocation of indirect medical education reimbursement (based upon paid claims to qualifying hospitals) and multiplying the total amount of money allocated to the graduate medical education and disproportionate share fund for indirect medical education by each respective hospital's percentage.

If a hospital fails to qualify for the provision of medical education under Medicare regulations, the amount of money that would otherwise be allocated to that hospital shall be removed from the total fund.

(5) Allocation for disproportionate share. To determine the total amount of funding that shall be allocated to the graduate medical education and disproportionate share fund for disproportionate share payments, the department shall:

1. Sum all routine disproportionate share payments for the fee for service population reimbursed to qualifying providers with dates of discharge from October 1, 1996, through March 31, 1997, and paid through June 30, 1997. These claims shall then be multiplied by two and statistically adjusted to fully annualize the amount of money to be placed in the fund for distribution and the total amount of reimbursement shall be applied to the fund.

2. Sum all routine disproportionate share payments from claims made to qualifying providers when those claims have been used as a basis for the calculation of capitation rates and reimbursement with either an HMO or other prepaid health plan with which the department has entered into a contract effective on or after July 1, 1997.

For each prepaid health plan, divide the total dollar reimbursement from claims by the number of member months applicable to the rate-setting methodology for the per member per month (PMPM) allocation to calculate the amount of reimbursement to be allocated to the fund that represents capitation rate reimbursement allocation for routine disproportionate share. The disproportionate share PMPM allocation shall then be multiplied by the total number of members enrolled in the plan for state fiscal year 1997, allocating that amount of money to the fund.

3. Trend the total allocation for routine disproportionate share (which includes money for both the fee for service population and the capitated risk-based population, calculated under numbers "1" and "2" above) forward using annually appropriated legislative update factors and determine the total amount of money that shall be allocated to the graduate medical education and disproportionate share fund for disproportionate share Medicaid reimbursement. No adjustments shall be made to this fund beyond appropriated updates. The total amount of disproportionate share reimbursement cannot exceed the cap that was implemented under Public Law 102-234.

(6) Distribution of disproportionate share fund. Distribution of the fund for disproportionate share shall be on a quarterly basis beginning October 1, 1997, and shall be calculated by taking the previous fiscal year's percentage allocation of direct medical education reimbursement (based upon paid claims to qualifying hospitals) and dividing the total amount of money allocated to the graduate medical education and disproportionate share fund for disproportionate share by each respective hospital's percentage.

If a hospital fails to qualify for reimbursement for disproportionate share under Iowa Medicaid regulations, the amount of money that would otherwise be allocated for that hospital shall be removed from the total fund.

z. Adjustments to the graduate medical education and disproportionate share fund for changes in utilization. Money shall be added to or subtracted from the graduate medical education and disproportionate share fund when the average monthly Medicaid population deviates from the previous year's averages by greater than 5 percent. The average annual population (expressed in a monthly total) shall be determined on June 30 for both the previous and current years by adding the total enrolled population for all respective months from both years' B-1 MARS report and dividing each year's totals by 12. If the average monthly number of enrolled persons for the current year is found to vary more than 5 percent from the previous year, a per member per month (PMPM) amount shall be calculated for each component (using the average number of eligibles for the previous year calculated above) and an annualized PMPM adjustment shall be made for each eligible person that is beyond the 5 percent variance.

Amend subrule 79.1(16) as follows:

Amend subrule **79.1(16)**, paragraph **"a,"** by adding the following **new** definition in alphabetical order.

"Graduate medical education and disproportionate share fund" shall mean a reimbursement fund developed as an adjunct reimbursement methodology to directly reimburse qualifying hospitals for the direct costs of interns and residents associated with the operation of graduate medical education programs for outpatient services.

Amend subrule **79.1(16)**, paragraph **"f,"** as follows:

f. Payment add-ons. If applicable to the provider, direct outpatient costs associated with education of interns and residents will be added to the base APG amount prior to setting the final APG payment rate *and shall be reimbursed to qualifying hospitals on a per claim basis if the claim has a first date of service prior to July 1, 1997.* The amount added on reflects Iowa Medicaid's average cost per visit for hospital-specific direct medical education adjusted to case-mix. This add-on is determined from the base year cost reports and is adjusted to reflect inflation. *For claims with a first date of service on or after July 1, 1997, all applicable reimbursement for graduate medical education shall be calculated and distributed according to policy at paragraph "v."*

Further amend subrule **79.1(16)** by adding the following **new** paragraphs **"v"** and **"w."**

v. Graduate medical education and disproportionate share fund. Payment shall be made to all hospitals qualifying for direct medical education directly from the graduate medical education and disproportionate share fund. The amount in the fund and distributions from the fund shall be calculated as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Allocation for direct medical education. To determine the total amount of funding that will be allocated to the graduate medical education and disproportionate share fund, the department shall:

1. Sum all direct medical education add-on payments for outpatient services using claims reimbursed to qualifying providers with the first date of service on or after October 1, 1996, prior to March 31, 1997, and paid through June 30, 1997. These amounts shall then be multiplied by two to annualize the amount of money to be placed in the fund for distribution and the total amount of computed reimbursement shall be allocated to the fund.

2. Sum all direct medical education add-on payments for outpatient services, using claims reimbursed to qualifying providers, when those claims have been used as a basis for the calculation of capitation rates and reimbursement with any health maintenance organization (HMO) or other prepaid health plan with which the department has entered into a contract effective on or after July 1, 1997.

For each prepaid health plan, divide the total dollar reimbursement from claims by the number of member months applicable to the rate-setting methodology for the per member per month (PMPM) allocation to calculate the amount of reimbursement to be allocated to the fund that represents capitation rate reimbursement allocation for direct medical education. The direct medical education PMPM allocation shall then be multiplied by the total number of members enrolled in the plan for state fiscal year 1997, allocating that amount of money to the fund.

3. Trend the total allocation for direct medical education (which includes money for both the fee for service population and the capitated risk-based population, calculated under numbers "1" and "2" above) forward using annually appropriated legislative update factors and determine the total amount of money that shall be allocated to the graduate medical education and disproportionate share fund for direct medical education Medicaid reimbursement. No adjustments shall be made to this fund beyond appropriated amounts.

(2) Distribution of direct medical education. Distribution of the fund for direct medical education shall be on a quarterly basis beginning October 1, 1997, and shall be calculated by taking the previous fiscal year's percentage allocation of direct medical education reimbursement (based upon paid outpatient claims to qualifying hospitals) and multiplying that percentage by the amount in the fund for direct medical education.

If a hospital fails to qualify for the provision of medical education under Medicare regulations, the amount of money that would have been allocated that hospital shall be removed from the total fund.

w. Adjustments to the graduate medical education and disproportionate share fund for changes in utilization. Money shall be added to or subtracted from the graduate medical education and disproportionate share fund, when the average monthly Medicaid population deviates from the previous year's averages by greater than 5 percent. The average annual population (expressed in a monthly total) shall be determined on June 30 for both the previous and current years by adding the total enrolled population for all respective months from both years' B-1 MARS report and dividing each year's totals by 12. If the average monthly number of enrolled persons for the current year is found to vary more than 5 percent from the previous year, a PMPM amount shall be calculated for each component (using the average number of eligibles for the previous year calculated above) and an annualized PMPM adjustment shall be made for each eligible person that is beyond the 5 percent variance.

ITEM 3. Amend rule 441—81.6(249A) as follows:

Amend the introductory paragraph as follows:

441—81.6(249A) Financial and statistical report. All facilities in Iowa wishing to participate in the program shall submit a Financial and Statistical Report ~~for Nursing Homes~~, Form AA-4036-0, to the department. *Costs for patient care services shall be reported, divided into the subcategories of "Direct Patient Care Costs" and "Support Care Costs." Costs associated with food and dietary wages shall be included in the "Support Care Costs" subcategory.* An electronically submitted cost report shall be accepted if the format is approved by the accounting firm under contract with the department to audit nursing facility cost reports. These reports shall be based on the following rules.

Amend subrule 81.6(3), introductory paragraph, as follows:

81.6(3) Submission of reports. The report shall be submitted to the department no later than three months after the close of each six months' period of the facility's established fiscal year. Failure to submit ~~the~~ *a* report *that meets the requirements of this rule* within this time shall reduce payment to 75 percent of the current rate. The reduced rate shall be paid for no longer than three months, after which time no further payments will be made.

Amend subrule **81.6(16)**, paragraph **"e,"** as follows:

e. Effective January 1, ~~1996~~ *1997*, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the December 31, ~~1995~~ *1996*, report of "unaudited compilation of various costs and statistical data."

Beginning July 1, ~~1996~~ *1997*, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the June 30, ~~1996~~ *1997*, report of "unaudited compilation of various costs and statistical data."

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7550A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 93, "PROMISE JOBS Program," appearing in the Iowa Administrative Code, and adopts Chapter 94, "Iowa Transitional Assistance for Direct Education Costs Program," Iowa Administrative Code.

The Council on Human Services adopted these amendments September 16, 1997. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7362A.**

HUMAN SERVICES DEPARTMENT[441](cont'd)

Eight public hearings were held around the state. No one attended and no written comments were received.

These amendments terminate PROMISE JOBS funding for direct education costs for FIP participants who were already participating in a PROMISE JOBS-funded training plan on March 1, 1997, and establish a new program to provide for state-only funding for these costs. This program was previously funded as part of the PROMISE JOBS program and financed using state and federal dollars. This new program will be implemented retroactive to March 1, 1997.

Earlier revisions to rule 441—93.114(249C) which were effective March 1, 1997, eliminated PROMISE JOBS assistance with direct education costs for all FIP participants who begin a postsecondary education or training plan after March 1, 1997. In addition, child care and transportation were made available to all participants in a postsecondary education or training plan without regard to available student financial aid. The revisions allowed payment of direct education costs for those who were active in postsecondary education or training on March 1, 1997, and who do not have enough student financial aid to cover them. This allowed PROMISE JOBS to honor the commitment made to participants who began to receive funding for their postsecondary education or training plan before the March 1, 1997, policy change. (See ARC 6964A published in the January 1, 1997, Iowa Administrative Bulletin.)

Those revisions were made to bring the PROMISE JOBS program into compliance with an interpretation of the Higher Education Act which implies that the state cannot use student financial aid administered through the federal Department of Education to reduce benefits of child care and transportation for Family Investment Program (FIP) participants in a work and training program.

These changes are a further attempt to ensure that the PROMISE JOBS program is not in conflict with an even more stringent interpretation of the Higher Education Act by the University of Iowa Law Clinic with whom a class-action lawsuit is currently pending. This more stringent interpretation would require Iowa to ignore the amount of the participants' federal student financial aid to determine how much assistance to make available for direct education costs. The basis for the interpretation is a federal law which prohibits states from using certain kinds of student financial aid when determining eligibility and benefits for other federal programs.

The Department believes that creation of the Iowa Transitional Assistance for Direct Education Costs Program (ITADEC) will allow the state to continue to honor that commitment by using state-only funds, involving no other federal funds, in the payment of any direct education costs for participants who receive federal student financial aid. PROMISE JOBS participants and field staff will see no difference in the receipt of assistance and administration of the program.

The Department considered eliminating all assistance with direct education costs for current as well as future participants who receive federal student financial aid. This may have been the surest way to ensure that the state is considered in compliance with the strictest interpretation of the Higher Education Act. The Department believes it is important to honor commitments made to those who were already participating on March 1, 1997.

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

These amendments are intended to implement 1997 Iowa Acts, Senate File 516, sections 18 to 23.

These amendments shall become effective November 12, 1997.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [93.114, Ch 94] is being omitted. These rules are identical to those published under Notice as ARC 7362A, IAB 7/16/97.

[Filed 9/16/97, effective 11/12/97]
[Published 10/8/97]

[For replacement pages for IAC, see IAC Supplement 10/8/97.]

ARC 7551A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 237A.12 and 1997 Iowa Acts, Senate File 541, section 5, the Department of Human Services hereby amends Chapter 110, "Family and Group Day Care Homes," appearing in the Iowa Administrative Code.

These amendments implement changes in the provision of child day care mandated by the Seventy-seventh General Assembly in 1997 Iowa Acts, Senate File 541. A new category of registered group day care homes is added called group day care home-joint registration, and a pilot program is implemented for a four-level system of registration for family or group day care homes in Delaware County beginning in July 1997, and in Scott County, beginning in October 1997.

◦ Under these amendments two persons who comply with the individual requirements for registration as a group day care provider may request that the certificate be issued to the two persons jointly and the Department shall issue a joint certificate provided the group day care home requirements for registration are met.

Under current policy, a registered group day care home shall not provide care for more than 11 children except in special circumstances. If there are more than 6 children present for a period of two hours or more, the group day care home must have at least one responsible individual who is at least 14 years of age present to assist the group day care provider. In a joint registration, the second responsible individual must be an adult who complies with the requirements for a primary caregiver. When a home is registered jointly, the total number of children permitted remains the same, but the groupings by age change.

If the responsible individual is a joint holder of a certificate of registration, not more than four of the children present shall be less than 24 months of age and not more than ten of the children present shall be 24 months of age or older but not attending school in kindergarten or a higher grade level.

If the responsible individual is not a joint holder of the certificate of registration, but is at least 14 years of age, not more than four of the children shall be less than 24 months of age and each child in excess of six children shall be attending school in kindergarten or a higher grade level.

◦ The pilot program for day care registration in Delaware County and Scott County completely revamps the current system for registration of family and group day care homes. The provisions do not apply to unregistered homes

in those two counties. In the pilot, which sets up a four-level system of registration, providers are allowed to care for increasing numbers of children as they have more experience and training.

The Department is to report to the General Assembly in February and December of 1998 on the advantages and disadvantages of this approach and address the feasibility of implementing the pilot project statewide.

1997 Iowa Acts, Senate File 541, established the number of children to be cared for by each level as follows:

Level I

1. Except as otherwise provided, not more than six children shall be present at any one time.
2. Not more than three children who are infants shall be present at any one time.
3. In addition to the six children, not more than two children who attend school may be present for a period of less than two hours at any one time.
4. Not more than eight children shall be present at any one time when an inclement weather exception is in effect.

Level II

1. Except as otherwise provided, not more than six children shall be present at any one time.
2. Not more than three children who are infants shall be present at any one time.
3. In addition to the six children, not more than four children who attend school may be present for a period of less than two hours at any one time.
4. In addition to the six children, not more than two children who are receiving care on a part-time basis may be present.
5. Not more than 12 children shall be present at any one time when an inclement weather exception is in effect. However, if more than 8 children are present during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least 14 years of age.

Level III

1. Except as otherwise provided in this paragraph, not more than six children shall be present at any one time.
2. Not more than three children who are infants shall be present at any one time.
3. In addition to the six children, not more than four children who attend school may be present.
4. In addition to the six children, not more than two children who are receiving care on a part-time basis may be present.
5. Not more than 12 children shall be present at any one time when an inclement weather exception is in effect.
6. If more than eight children are present during an inclement weather exception, the provider must be assisted by a responsible individual who is at least 14 years of age.

Level IV

1. Except as otherwise provided in this paragraph, not more than six children shall be present at any one time. If more than seven children are present, a second person must be present who meets the individual qualifications for child care home registration.
2. Of the above number, not more than four children who are infants shall be present at any one time.
3. In addition to the 12 children, not more than 2 children who attend school may be present for a period of less than two hours at any one time.
4. In addition to the 12 children, not more than 2 children who are receiving care on a part-time basis may be present.
5. Not more than 16 children shall be present at any one time when an inclement weather exception is in effect. If more than 8 children are present at any one time during an inclement weather exception, the provider shall be assisted by a responsible individual who is at least 18 years of age.

The legislation directed the Department to adopt rules applying requirements to each level for the amount of space available, provider qualifications and training, and other minimum standards. The Department was to consult with the State Fire Marshal regarding needed fire safety rules and to also adopt rules relating to the provision of a separate area for sick children in child care homes registered at Levels III and IV.

The Department developed the following standards specific to the four levels in consultation with a work group of nonregistered providers, registered providers, parents, and Child Care Resource and Referral Agency representatives and the State Fire Marshal.

Level I

The Level I provider must be at least 18 years old and have three written references which attest to character and ability to provide child care.

The Level I provider must obtain certificates of completion for mandatory reporters of child abuse, first aid, and CPR. In addition, the first year they must complete a two-hour health and safety course. The second and succeeding years they must complete ten hours of training from certain categories.

Level II

The Level II provider must be at least 19 years old, have a high school diploma or GED, and must meet one of the following requirements:

1. Have two years of experience working directly with children in child care.
2. Have one year of experience working directly with children from birth through the age of 12 and one year of experience at Level I.
3. Have a child development associate degree or any two- or four-year degree in a child care related field and one year of experience at Level I.

The Level II provider must receive two more hours of training per year than Level I providers, chosen from certain categories.

There shall be a minimum of 35 square feet of child use floor space for each child in care indoors in a Level II home.

Level III

The Level III provider must be at least 21 years old and must meet one of the following requirements:

1. Have two years of experience at Level I, and two years of experience at Level II.
2. Have one year of experience working directly with children from birth through the age of 12 and one year of experience at Level I, and two years of experience at Level II.
3. Have a child development associate degree or any two- or four-year degree in a child care related field and one year of experience at Level I and two years of experience at Level II.

The Level III provider must receive two more hours of training per year than Level I providers, chosen from certain categories.

There shall be a minimum of 35 square feet of child use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors in a Level III home. There shall be a separate quiet area for sick children and established fire safety requirements shall be met.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Level IV

The Level IV provider must be at least 21 years old and must meet one of the following requirements:

1. Have two years of experience at Level I and two years of experience at Level II and one year of experience at Level III.

2. Have one year of experience working directly with children and one year of experience at Level I and two years of experience at Level II and one year of experience at Level III.

3. Have a child development associate degree or any two- or four-year degree in a child care related field and one year of experience at Level I and two years of experience at Level II and one year of experience at Level III.

The Level IV provider must receive five more hours of training per year than Level I providers, chosen from certain categories.

There shall be a minimum of 35 square feet of child use floor space for each child in care indoors, and a minimum of 50 square feet per child in care outdoors in a Level IV home. There shall be a separate quiet area for sick children and established fire safety requirements shall be met.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments were previously Adopted and Filed Emergency and published in the July 2, 1997, Iowa Administrative Bulletin as ARC 7328A. Notice of Intended Action to solicit comments on that submission was published in the July 2, 1997, Iowa Administrative Bulletin as ARC 7327A.

Eight public hearings were held around the state. Seven persons attended. There were no written comments submitted and no changes were made in response to the comments.

These amendments are intended to implement Iowa Code chapter 237A as amended by 1997 Iowa Acts, Senate File 541.

These amendments shall become effective December 1, 1997, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 110] is being omitted. These rules are identical to those published under Notice as ARC 7327A, IAB 7/2/97.

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

[For replacement pages for IAC, see IAC Supplement 10/8/97.]

ARC 7552A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 130, "General Provisions," and Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments September 16, 1997. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on July 16, 1997, as ARC 7363A. Eight public hearings were held around the state. Two persons attended.

These amendments implement the following changes to day care policy:

- Families currently receiving day care services who were receiving child day care services as of June 30, 1993, will no longer be grandfathered in at 155 percent of the federal poverty level when determining their financial eligibility. Their financial eligibility will be determined at 125 percent of the federal poverty level.
- Policy governing financial eligibility of families with protective needs is removed from the Preamble to 441—Chapter 170 and added to 441—paragraph 130.3(1)"e."
- The number of hours an employed parent must work to receive day care services is increased from 20 hours per week to 28 hours per week. Raising the hours a parent must work is more reflective of the hours a parent must work in order to become self-sufficient. Language is changed to require that parents provide documentation of job search activities.
- The definition of a child with protective needs is revised to conform with current child abuse terminology.
- The time a parent can receive subsidized child care while participating in academic or vocational training is limited to a 24-month lifetime limit. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the 24-month limit. PROMISE JOBS child care allowances provided while the parent is a recipient of the Family Investment Program and participating in PROMISE JOBS components in postsecondary education or training shall count toward the 24-month lifetime limit.

At the present time families are approved for child day care services while attending school only when they are under age 21 because of the priority group requirements. Adoption of these rules will eliminate use of the priority group requirements established by the General Assembly unless funds are later determined insufficient and waiting lists are implemented.

- Subsidy under the Child Care Assistance program is denied to families on a PROMISE JOBS waiting list for the hours in academic or vocational training. Since both child care programs are now funded under the Federal Child Care and Development Fund, it is illogical to continue a policy that previously resulted in shifting the cost from one program to another.
- The provision of protective child day care services is limited to licensed and registered providers.

The changes in hours of work, limits on subsidy during participation in approved education or training programs, and eligible protective care providers were recommended by the Child Care Work Group of the Welfare Reform Advisory Group and accepted by the State Child Day Care Advisory Council.

The following revisions were made to the Notice of Intended Action:

Subrule 170.2(2), paragraph "d," was revised by adding the word "child" for clarification.

Rule 441—170.8(234), second paragraph, which was not originally noticed, was revised to delete a reference to families receiving day care services as of June 30, 1993, a change which was inadvertently omitted at the time the rules were noticed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective December 1, 1997.

The following amendments are adopted.

ITEM 1. Amend subrule **130.3(1)** as follows:

Amend paragraph **"d,"** subparagraph **(2)**, last paragraph, as follows:

Column C is used ~~to determine ongoing income eligibility for families receiving child day care services as of June 30, 1993,~~ to determine income eligibility for families with children with special needs ~~applying for child day care services,~~ and for families who have received transitional child care for 24 consecutive months.

Amend paragraph **"e"** as follows:

e. Certain services are provided without regard to income which means family income is not considered in determining eligibility. The services provided without regard to income are information and referral, child abuse investigation, child abuse treatment, child abuse prevention services, *including protective child day care services,* family-centered services, dependent adult abuse evaluation, dependent adult abuse treatment, dependent adult abuse prevention services, and purchased adoption services to individuals and families referred by the department.

ITEM 2. Amend the Preamble to **441—Chapter 170** as follows:

PREAMBLE

The intent of this chapter is to establish requirements for the payment of child day care services. Child day care services are for children of low-income parents who are in academic or vocational training; or employed ~~20 hours or more per week~~ *or looking for employment*; or for a limited period of time, ~~when the caring person is~~ absent due to hospitalization, physical or mental illness, or death; or ~~for~~ *needing* protective services ~~without regard to income~~ *to prevent or alleviate child abuse or neglect*~~; or for a parent looking for employment~~. Services may be provided in a licensed child care center, a registered group day care home, a registered family day care home, the home of a relative, the child's own home, a nonregistered family day care home, or in a facility exempt from licensing or registration.

ITEM 3. Amend rule **441—170.1(234)**, definition of "Child with protective needs," as follows:

"Child with protective needs" means a child who has a case plan that identifies protective child day care as a required service and who is a member of a family with one of the following:

1. A ~~founded or undetermined~~ *confirmed* case of child abuse.

2. Episodes of family or domestic violence or substance abuse which place the child at risk of abuse or neglect and have resulted in a service referral to family preservation or family-centered services.

ITEM 4. Amend rule 441—170.2(234) as follows:

441—170.2(234) Eligibility.

170.2(1) No change.

170.2(2) General eligibility requirements. *In addition to meeting financial requirements, the child needing services must meet age requirements and each parent in the household must have at least one need for service. When funds are insufficient, families applying for services must meet the specific requirements found in subrule 170.2(4) of the priority group for which applications are being taken. Families approved when applications are being taken for priority groups are not required to meet the requirements in paragraph 170.2(2)"b" except at review or redetermination.*

a. Age. Child day care shall be provided only to children up to age 13, unless they are children with special needs in which case child care shall be provided up to age 19.

~~170.2(3)~~ *b.* Need for service. ~~The need for child day care services shall be established through the assessment process as set forth in 441—Chapter 131. The child or parents of the child~~ *Each parent in the household* shall meet one or more of the following requirements ~~in order to be eligible for child day care services~~:

~~a.~~ *(1)* The parent ~~or parents are~~ *is* in academic or vocational training. *Child care provided while the parent participates in postsecondary education or vocational training shall be limited to a 24-month lifetime limit. A month is defined as a fiscal month or part thereof and shall generally have starting and ending dates falling within two calendar months but shall only count as one month. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the 24-month limit. PROMISE JOBS child care allowances provided while the parent is a recipient of the family investment program and participating in PROMISE JOBS components in postsecondary education or training shall count toward the 24-month lifetime limit.*

~~b.~~ *(2)* The parent is employed ~~20~~ *28* or more hours per week, or ~~is employed~~ an average of ~~20~~ *28* or more hours per week during the month. Child care services may be provided for the hours of employment of a single parent or the coinciding hours of employment of both parents in a two-parent home, and for actual travel time between home, child care facility, and place of employment.

~~c. Rescinded IAB 11/10/93, effective 12/1/93.~~

~~d.~~ *(3)* ~~Day~~ *The parent needs child day* care ~~is~~ *as* part of a protective service plan to prevent or alleviate child abuse or neglect.

~~e.~~ *(4)* The person who normally cares for the child is absent from the home due to hospitalization, physical or mental illness, or death. Care under this paragraph is limited to a maximum of one month, unless extenuating circumstances are justified and approved after case review by the ~~district~~ *regional* administrator.

~~f.~~ *(5)* The parent ~~or parents are~~ *is* looking for employment. Child care for job search shall be limited to only those hours the parent is actually looking for employment including travel time. A job search plan shall be approved by the department and limited to a maximum of 30 working days in a 12-month period. Child care in two-parent families may be provided only during the coinciding hours of both parents' looking for employment, or during one parent's employment and one parent's looking for employment. Documentation of job search contacts shall be furnished to the department ~~upon request~~. The department may enter into a nonfinancial coordination agreement for information exchange concerning job search documentation.

~~g. The parent or parents have entered a self-initiated program for training approved under JOBS.~~

~~h. Rescinded IAB 7/6/94, effective 7/1/94.~~

~~170.2(4)~~ *170.2(3)* Priority for service. Funds available for child day care services shall first be used to continue services to families *currently* receiving child day care services ~~as of June 30, 1993,~~ and to families with protective child care needs. As funds are determined available, families shall be served on a statewide basis from a regionwide waiting list

based on the following schedule in descending order of prioritization. Applications for child day care services shall be taken only for the priority groupings for which funds have been determined available.

a. to g. No change.

~~170.2(5)~~ *170.2(4)* Prioritization within child care subsidized programs.

a. No change.

b. Any recipient of the family investment program who is in academic or vocational training *and on a PROMISE JOBS waiting list for expense allowances including child care* shall ~~have the service worker verify that PROMISE JOBS funding is not available before the recipient can receive assistance~~ *not be eligible for subsidy for the hours in academic or vocational training* under ~~a~~ *the* child care ~~subsidized~~ *assistance* program.

ITEM 5. Amend subrule 170.4(3), introductory paragraph, as follows:

170.4(3) Method of provision. The department shall issue the Child Care Certificate, Form 470-2959, to the client to select a child day care provider. Parents shall be allowed to exercise their choice for in-home care, *except when the parent meets the need for service under subparagraph 170.2(2)"b"(3),* as long as the conditions in *paragraph* 170.4(7)"d" are met. When the child meets the need for service under ~~paragraph 170.2(3)"d,"~~ *170.2(2)"b"(3),* parents shall be allowed to exercise their choice of *licensed or registered* child care provider except when the department service worker determines it is not in the best interest of the child.

ITEM 6. Amend rule 441—170.8(234) as follows:

441—170.8(234) Allocation of funds. The department shall allocate funds for child day care services to the regional offices of the department to ensure that the current need and projected growth in services to families *currently* receiving child day care services ~~as of June 30, 1993,~~ and to families with protective child care needs are met. The funds for nonprotective child day care services shall be allocated based on the expenditures of the regional office proportional to the total state expenditures for nonprotective child day care services. The funds for protective child day care services shall be allocated based on historical data, with 60 percent of the total allocation to the regional office based on the number of founded child abuse cases in the region proportional to the total number of founded child abuse cases in the state, and 40 percent of the total allocation to the regional office based on the number of child abuse reports in the region proportional to the total number of child abuse reports in the state. The department may redistribute any unobligated funds from the original allocation to the regional offices based on the number of children living in the region whose family income is at or below 100 percent of the federal poverty guidelines.

The regional office of the department shall manage the child day care funds allocated to the region and shall distribute the allocation among the counties within the region based on, but not limited to, the factors used to allocate funds to the regional offices. The regional office may redistribute any unobligated funds from the original allocation to the county offices to ensure that the current need and projected growth in services to families *currently* receiving child day care services ~~as of June 30, 1993,~~ and to families with protective child care needs are met.

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7553A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 1997 Iowa Acts, House File 702, section 21, and House File 715, section 28, subsection 13, and section 37, the Department of Human Services hereby amends Chapter 150, "Purchase of Service," and Chapter 153, "Social Services Block Grant and Funding for Local Services," appearing in the Iowa Administrative Code.

In order for the counties to fulfill their duties pursuant to the approved county management plans, counties must have service agreements with providers of mental health, mental retardation and developmental disabilities services. The Iowa State Association of Counties has requested the assistance of the Department in negotiating contracts on behalf of the counties. Therefore, these amendments create a new Division II to the purchase of service contracting rules to set forth the terms and conditions for contracting that will be used by the Department when contracting on behalf of counties with providers of local purchase services for adults with mental illness, mental retardation and developmental disabilities. In addition, these amendments update the fiscal year for the maximum reimbursement rates for social service providers covered by Division I of the rules, provide a 1 percent rate increase to sheltered work and work activity providers as mandated by the General Assembly, and establish the lowest rate established for the service by a county with an approved county management plan as the rate for providers of services for persons in the State Payment program.

The following is a summary of the differences between the provisions of these terms and conditions for contracting on behalf of counties under a 28E Agreement and the terms and conditions for other contracting as set forth in 441—Chapter 150, Division I:

- References to "County" and the "approved County Management Plan" are incorporated into the rules as applicable to reflect the relationship of the County to the contract.
- Subrule 150.22(1) provides for a County to enter into a 28E Agreement with the Department in order for the Department to contract on the county's behalf for local purchase services.
- Subrule 150.22(2) identifies how the provisions of these rules will be incorporated into existing contracts for local purchase services.
- Paragraph 150.22(3)"d" clarifies that both initial contracts and contract amendments must be signed by all parties.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Paragraph 150.22(3)"e" clarifies that the criteria for rejection apply to both initial contracts and contract amendments. The criteria for rejection have been reworded and a new criterion added. A contract amendment or new contract will be processed only if requested by a County which has entered into a 28E Agreement with the Department and if the Department has the resources available to negotiate and process the contract.
- Paragraph 150.22(3)"f" provides that the contract or contract amendment can be effective the first of the month in which the contract or contract amendment is signed as long as all the required conditions are met the entire month.
- Subrule 150.22(4) provides for monitoring of the contract pursuant to the 28E Agreement. Under the 28E Agreement, the Department is responsible for monitoring compliance with the terms and conditions of the contract. The County is responsible for monitoring services to the individual clients referred by the County and determination that the provider maintains documentation to support the claims for services rendered, as determined necessary by the County.
- Paragraph 150.22(5)"i" provides that client appeals of adverse decisions made by a County are to be made in accordance with the appeal provisions of the County Management Plan.
- Paragraph 150.22(5)"j" provides authorization to specified persons to review client records.
- Subparagraphs 150.22(5)"j"(1) to (3) provide for provider service plans, quarterly reports and termination summaries to be sent to the central point of coordination.
- Paragraph 150.22(5)"k" provides for access to provider financial and statistical records by authorized County personnel.
- Paragraph 150.22(5)"n" is a provision regarding provider charges. The provider is not prohibited from charging more for clients referred pursuant to the Purchase of Service contract than the provider receives for the same services provided to other clients referred by other parties not subject to the contract. There may be several counties on whose behalf the Department is contracting with the same provider. As provided for in subrule 150.22(6), each County will have the option to establish the rates for services for persons referred by that County or to have the Department establish the rate. This could result in a provider having multiple rates for the same service provided under the contract.
- Subrule 150.22(6) provides for rates to be established either by the Department or by the County. If rates are established by the Department, they will continue to be subject to limitations established in law or rule.
- Subrule 150.22(8) provides that the County is responsible for determining client eligibility and making the referral for services provided pursuant to the contract.
- Subrule 150.22(10) provides claims for services to be submitted to the County responsible for the client.
- Subrule 150.22(11) requires the Department to notify applicable counties of decisions reached in response to a request for review of Department actions. A provider adversely affected by a County decision, such as rate setting, may request a review of that decision in accordance with procedures established by the County.
- Subrule 150.22(13) requires the provider to notify the Department of any changes in the provider's organization or delivery of services which may have an impact on the provider's compliance with the contract requirements.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments were previously Adopted and Filed Emergency and published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7334A**. Notice of Intended Action to solicit comments on that submission was published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7333A**. Eight public hearings were held around the state. Three persons attended, one of whom submitted written comments.

The following revision was made to the Notice of Intended Action:

Subrule 150.22(4), paragraph "d," was revised to clarify the time frames for termination and specify what constitutes notice of termination. Paragraph "d" now reads as follows:

d. Contract termination.

(1) Causes for termination during the period of the contract are:

1. Mutual agreement of the parties involved.
2. Demonstration that sufficient funds are unavailable to continue the services involved.
3. Failure to make required reporting.
4. Failure to make financial and statistical records available for review.
5. Failure to abide by the provisions of the contract.

(2) The provider or the department may terminate this contract without cause upon 30 days' notice. The department may terminate the contract upon 10 days' notice for cause except in the event of loss of licensure or imminent danger to clients. In the event of loss of license, the contract shall be terminated on the date the license is terminated or relinquished, without the need for notice. In the event of imminent danger to clients, the contract shall be terminated immediately upon notice.

(3) When notice of termination is required herein, it shall be provided by certified mail and is effective upon receipt as evidenced by the U.S. Postal Service return receipt card.

These amendments are intended to implement Iowa Code section 234.6 and 1997 Iowa Acts, House File 715, section 23 and section 28, subsections 5 and 7, and House File 702, section 21.

These amendments shall become effective December 1, 1997, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Chs 150, 153] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7333A**, IAB 7/2/97.

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

[For replacement pages for IAC, see IAC Supplement 10/8/97.]

ARC 7554A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 234.6 and 235A.14(1), the Department of Human Services hereby amends Chapter 175, "Abuse of Children," appearing in the Iowa Administrative Code.

These amendments implement the following changes to policies governing the abuse of children mandated by the

Seventy-seventh General Assembly in 1997 Iowa Acts, Senate File 176, Senate File 230, and House File 698.

- The Department shall incrementally expand the child abuse assessment-based approach to child abuse allegations so that this approach is operating statewide by July 1, 1998. Currently this approach is used in 19 counties. The assessment approach allows the Department to develop divergent strategies when responding to child abuse reports, adjusting its response according to the severity of abuse, to the functioning of the family, and to the resources available within the child and family's community.
- Effective July 1, 1997, statewide, the Department shall determine if abuse occurred and then determine if the abuse meets the specified criteria for placement on the Child Abuse Registry. Reports of physical abuse or denial of critical care where abuse has been confirmed and determined to be minor, isolated, and unlikely to reoccur shall not be placed on the Central Abuse Registry. The confirmed abuse shall be placed on the Registry unless all three conditions are met. Minor abuse shall be placed on the registry if there is a prior confirmed abuse. Reports where abuse is confirmed which are not placed on the Registry and reports where abuse is not confirmed shall be retained for five years from the date of intake or five years from the date of closure of the service record, whichever occurs later.
- Policy governing confidentiality and access to records containing child abuse information is revised to address the change that only confirmed abuse meeting the criteria specified shall be placed on the Registry.

Access to reports not placed on the Registry where abuse was confirmed is authorized only to the subjects of the investigation report, the investigator, law enforcement officer responsible for assisting in the investigation, the multidisciplinary team if assisting the Department in the investigation of the abuse, county attorney, juvenile court, a person or agency responsible for the care of the child if the Department or juvenile court determines that access is necessary, the Department personnel necessary for official duties, the Department of Justice, and the attorney for the Department. Access to reports not placed on the Central Registry where abuse was not confirmed is authorized only to the subjects of the assessment report, the child protective worker, county attorney, juvenile court and to Department personnel necessary for official duties.

- Policy is established for retroactive review of child abuse information which is on the Registry as of July 1, 1997. If any of the following reviews determines that the report should be expunged, the time the report has been on the Registry shall count toward the five years the record shall be retained.

1. All subjects of abuse reports have a right to request a review for correction or expungement of that report for six months from the date of the notification of a finding on a report. Effective July 1, 1997, reviews for reports occurring prior to July 1, 1997, shall be made using the new requirements. If the review of a report of physical abuse or denial of critical care where abuse has been confirmed is determined to be minor, isolated, and unlikely to reoccur, the information shall be expunged from the Registry.
2. A person who is the subject of a child abuse report which is included in the Registry as of July 1, 1997, and for whom the six months for requesting a review has expired may also request a review from the Department for a six-month period from July 1, 1997, to December 31, 1997. All such requests shall be placed on a waiting list and the Department shall submit a report to the General Assembly on or before February 1, 1998, indicating the number of requests received and projecting a time frame to complete the reviews based upon the usage of specific staffing levels.
3. A Department worker completing a record check evaluation for licensing, registration, or employment or residence in a child care facility shall also review reports of physical abuse or denial of critical care using the new requirements. If the worker determines the report should be expunged from the Registry, the worker shall refer the report to the Chief of the Bureau of Program Support and Protective Services. Within 30 days the Bureau Chief shall determine if the report is to be expunged.

- The Department is required to notify law enforcement in writing within 72 hours of a report on noncaretaker sexual abuse.

The Council on Human Services adopted these amendments September 16, 1997.

These amendments were previously Adopted and Filed Emergency and published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7330A**. Notice of Intended Action to solicit comments on that submission was published in the July 2, 1997, Iowa Administrative Bulletin as **ARC 7329A**. Eight public hearings were held around the state. Four persons attended the hearings to ask questions and one written comment was received.

The following revision was made to the Notice of Intended Action:

Rule 441—175.39(232) was revised to add the following language which was added for clarification to rule 441—175.13(232) at the time the rules were first adopted at the request of the Administrative Rules Review Committee, but which was inadvertently omitted from rule 441—175.39(232). "The confirmed abuse shall be placed on the Registry unless all three conditions are met. Minor abuse shall be placed on the registry if there is a prior confirmed abuse."

These amendments are intended to implement Iowa Code chapter 235A as amended by 1997 Iowa Acts, Senate File 230 and House File 698, and Iowa Code sections 232.67 to 232.77 as amended by 1997 Iowa Acts, Senate File 176, Senate File 230 and House File 698.

These amendments shall become effective December 1, 1997, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [amendments to Ch 175] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7329A**, IAB 7/2/97.

[Filed 9/16/97, effective 12/1/97]
[Published 10/8/97]

[For replacement pages for IAC, see IAC Supplement 10/8/97.]

ARC 7571A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter

NATURAL RESOURCE COMMISSION[571](cont'd)

15, "General License Regulations," Iowa Administrative Code.

These rules establish the conditions under which the Department will refund fees submitted with applications for special deer or turkey permits or accommodate related requests.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7377A**. A public hearing was held August 5, 1997. No comments were received.

The final rule was changed from the Notice of Intended Action in response to further staff review. A change was made in subrule 15.11(4) to clarify that written verification of a change request received by telephone must be received by the Department before a change request will be honored. Also, a nonsubstantive drafting error was corrected.

This rule is intended to implement Iowa Code section 483A.9.

This rule will become effective November 12, 1997.

The following rule is adopted.

Amend 571—Chapter 15 by adding the following **new** rule:

571—15.11(483A) Refunds or changes for special deer and turkey permits and general licenses.

15.11(1) Invalid applications. Deer and turkey permit applications that are received too late for processing after the closing date for acceptance of applications or applications that are invalid on their face will be returned unopened to the applicant. Permit fees related to applications which are determined to be invalid by a computer analysis or other analysis after the applications have been processed will be refunded to the applicant, less a $10 invalid application fee to compensate for the additional processing cost related to an invalid application.

15.11(2) Death of applicant. Deer or turkey permit fees will be refunded to the applicant's estate when the permittee's death predates the season for which the permit was issued and a written request is received from the permittee's spouse, executor or estate administrator within 90 days of the last date for which the permit was issued.

15.11(3) National or state emergency. Deer or turkey permit fees will be refunded if the permittee is a member of the National Guard or a reserve unit and is activated for a national or state emergency which occurs during the season for which the permit was issued. A written refund request must be received by the DNR within 90 days of the last date of the season for which the permit was issued.

15.11(4) Permit changes. The agency will attempt to change an applicant's choice of season or type of permit if a written or telephonic request is received by the license bureau in sufficient time, usually 20 days, prior to printing the permit, and if the requested change does not result in disadvantage to another applicant. Telephonic change requests must be verified in writing by the requester before a change request will be honored. The agency's ability to accommodate requests to change season or permit type is dependent on workload and processing considerations. If the agency cannot accommodate a request to change a season or type choice, the permit will be issued as originally requested by the applicant. No refund will be allowed. The agency will not change the name on the permit from that submitted on the application.

15.11(5) General hunting and fishing licenses duplicate purchase. Upon a showing of sufficient documentation, usually a photocopy of the licenses, that more than one hunting or fishing license was purchased by or for a single person, the agency will refund the amount related to the duplicate purchase. A written refund request, with supporting documentation, must be received by the license bureau within 90 days of the date on the face of the duplicate licenses.

15.11(6) Other refund requests. Except as previously described, the agency will not issue refunds for any licenses, stamps or permits related to fishing and hunting.

This rule is intended to implement Iowa Code section 483A.9.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7572A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 19, and adopts in lieu thereof a new Chapter 19, "Sand and Gravel Permits," Iowa Administrative Code.

This action will rescind Chapter 19 and replace it with new rules describing the procedures and methods to be followed by the Iowa Department of Natural Resources and by private individuals and aggregate processing businesses to remove sand and gravel from state-owned lands and waters under the jurisdiction of the Department.

The new rules are intended to simplify royalty calculations and improve the language and organization of the rules to make them easier for the public to understand and utilize.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7387A**. A public hearing was held on August 5, 1997. No comments were received.

Changes from the Notice of Intended Action were made in response to further staff review. Additional language was added to subrule 19.3(6) to include reclamation or other environmental mitigation as costs to be covered by required surety bonds. Also, language was added to subrule 19.4(9) to recognize royalty rates established through sealed bids for exclusive permits.

These rules are intended to implement Iowa Code sections 461A.52, 461A.53 and 461A.55 to 461A.57.

These rules will become effective November 12, 1997.

The following chapter is adopted.

Rescind 571—Chapter 19 and insert the following **new** chapter in lieu thereof:

CHAPTER 19
SAND AND GRAVEL PERMITS

571—19.1(461A) Purpose. This chapter provides the procedures for individuals and businesses to obtain a permit for removal of sand and gravel from state-owned lands and waters under the jurisdiction of the department of natural resources and the rules associated with the holding of a permit. The purpose of these rules is to ensure that the waterways are protected from permanent damage, that they remain ecologi-

cally intact, and that public recreational use is not adversely affected.

571—19.2(461A) Definitions.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources or a designee.

"Exclusive permit" means a permit issued for a described area which gives the permit holder sole and superior right to conduct activities as stated in this rule.

"Material" means any size particle of sand, gravel or stone.

"Nonexclusive permit" means a permit issued for a described area that does not give the permit holder sole right to conduct activities as described in this rule, and which may be superseded by the issuance of an exclusive permit.

"State-owned lands and waters" means lands and waters acquired by the state by fee title and sovereign lands and waters.

"Watercraft" means any vessel which through the buoyant force of water floats upon the water and is capable of carrying one or more persons.

571—19.3(461A) Permit applications. Applications shall be submitted to the department for nonexclusive or exclusive permits.

19.3(1) Application procedures. Applications shall be submitted on a form provided by the department and shall include the following:

a. A fee of $100 for the cost of inspection and issuance of each permit.

b. A map of the specific area or segment of the river or stream to be included under the permit indicating the section, township, range, location of the processing plant and material stockpiles, the location shape, and size of existing or proposed tailing ponds for washing operations, and the method of material removal.

c. A statement certifying that, if necessary, access over privately owned land to the permit site has been secured by the applicant for the use of the department personnel for inspection purposes.

19.3(2) Nonexclusive permits. Applications for nonexclusive permits may be submitted, for the current calendar year, at any time. Nonexclusive permits are subject to issuance of exclusive permits. In the event an exclusive permit is issued for a site covered by an existing nonexclusive permit, the nonexclusive permit shall be terminated in the same manner as termination for cause.

19.3(3) Exclusive permits. Applications for exclusive permits may be submitted, for the current calendar year, at any time. Applications for exclusive permits for the following calendar year shall only be accepted after November 15. In the event an application is received for an area covered by an existing nonexclusive permit, the holder of the existing permit shall be notified within 20 days and invited to submit an application for an exclusive permit. If more than one application for an exclusive permit site is received, issuance will be determined by written sealed bids. Bids shall be based on royalty rates. Bids submitted with a royalty rate less than 25 cents per ton shall not be accepted. The permit shall be issued to the applicant submitting the highest royalty rate bid.

19.3(4) Application approval. Each application will be reviewed by the department and a permit shall be issued unless it is determined that the proposed activity will result in significant temporary or permanent ecological damage or result in significant adverse effects on public recreational use.

19.3(5) Insurance. Prior to issuance of permits, approved applicants shall provide the department a certificate of insurance, covering the entire permit term, to jointly and severally indemnify and hold harmless the state of Iowa, its agencies, officials and employees from and against all liability, loss, damage or expense which may arise in consequence of issuance of the permit.

19.3(6) Surety bonds. Prior to issuance of permits, approved applicants shall provide to the department a surety bond in the amount of $5,000, covering the term of the permit. The surety bond shall guarantee payment to the state of Iowa for all material removed under the permit within 60 days after expiration of the permit, unless the permit holder renews the permit within 30 days of said expiration date, and for the recovery of any costs associated with reclamation or other environmental mitigation required as a condition of issued permits.

571—19.4(461A) Permit conditions and operating procedures.

19.4(1) Permit term. Permits shall expire on December 31 of each calendar year.

19.4(2) Permit area. The size and configuration of permit sites shall be as designated by the director. The maximum continuous length of a river or stream covered by each permit shall be 4,500 lineal feet.

19.4(3) Disturbance of bank. Removal operations authorized by permits shall not be performed within 30 feet of the existing bank or breach the bank at any location along any lake, stream or river unless written permission is obtained from the director prior to performance of such operations.

19.4(4) Water flow and watercraft obstruction. Removal operations authorized by permits shall not obstruct the flow of water to the extent of preventing its ultimate passage to its usual course below the lands and waters covered by the permits and shall not prevent movement of watercraft through such waters.

19.4(5) Waterway marking. All equipment at permit sites that is on the surface of water or above or under the water shall be marked to be visible 24 hours per day. Any structure or other device below the water must be marked to indicate to watercraft operators where safe passage may occur. All markings shall conform to the uniform waterway marking system and be provided and installed by permit holders.

19.4(6) Termination for cause. Permits may be terminated by the director at any time if a permit holder fails to fulfill the obligations under the permit in a timely and proper manner, or if a permit holder violates any of the terms and conditions of the permit. In the event of termination, the director shall serve a notice of termination to the permit holder in person or to any agent of the permit holder at or near the operation site or by certified mail at the address indicated on the permit. The permit shall be considered terminated as of the date of service of the notice. In the event of termination, no refund of royalty or application fees will be paid. Upon service of the notice of termination, the permit holder shall immediately stop all removal operations and remove all equipment from the lands and waters covered by the permit within ten days after the date of the notice of termination. In the event of failure of the permit holder to remove all equipment from the premises within such time period, the director shall have the right to remove the equipment at the expense of the permit holder.

19.4(7) Inspections. Permit sites may be inspected by the director at any time during the permit term in order to verify compliance with permit terms and conditions, or thereafter

NATURAL RESOURCE COMMISSION[571](cont'd)

until final payment is made under a terminated permit. Permit holders shall keep a daily record of the amount of material removed in the manner described by the director. All such records shall be open to inspection by the director at all times.

19.4(8) Reporting procedures. Permit holders shall furnish an itemized statement of material removal operations to the director within ten days after the last day of each calendar month. Statements shall also be filed in months when no materials are removed. Reporting procedures may be modified on a case-by-case basis at the discretion of the director, to accommodate differences in material removal or operation methods. However, reporting periods shall not be greater than one-month intervals. Permit holders shall notify the department ten days prior to the initial start of removal operations or whenever the previous monthly statement indicated no materials removed. Each cubic yard of sand, gravel, and stone removed under permits shall be considered to weigh 3000 pounds. Statements shall be submitted on forms furnished by the department and shall indicate the following:

a. Hours of removal operations performed each day on lands and waters covered by the permit.

b. Tons of material removed from the lands and waters covered by the permit each day.

c. Tons of material, from all sources, stockpiled at the operations site at the end of the month.

19.4(9) Royalty payments. Permit holders shall make royalty payments on a monthly basis for all material removed from permit sites within ten days after the last day of each calendar month. Monthly royalty payments shall be calculated using the tonnage of material removed as reported on the monthly statement. The royalty rate shall be 25 cents per ton or the rate determined by sealed bids. Exclusive permit holders shall pay an annual minimum royalty fee of $10,000, to be paid upon issuance of the permit. Exclusive permit holders shall receive royalty credit for materials removed to a maximum of $5,000 annually.

These rules are intended to implement Iowa Code sections 461A.52, 461A.53 and 461A.55 to 461A.57.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7574A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting," Iowa Administrative Code.

These rules give the seasons for hunting deer during the fall and include season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take and transportation tag requirements. The proposed amendment specifies the required procedures for issuing additional deer licenses and shooting permits to reduce damage from deer to agricultural and horticultural crops.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as **ARC 7385A**. Several comments were received on the depredation procedures and, as a result, the following changes from the Notice of Intended Action were made.

1. Shooting hours are eliminated in 106.11(1).
2. License wording change in 106.11(4)"a."
3. Provide for row crop producers to have out-of-season shooting permits during September and October in 106.11(4)"b"(3).

This amendment is intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

This amendment shall become effective November 12, 1997.

The following amendment is adopted.

Rescind rule 571—106.11(481A) and insert the following new rule in lieu thereof:

571—106.11(481A) Deer depredation management. Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.7(481A).

For deer shooting permits only, there are no shooting hour restrictions. The producer or designee must meet the deer hunters' orange apparel requirements in Iowa Code section 481A.122.

106.11(2) Eligibility. Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nurseries, and commercial nut growers) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding $1,500 in a single growing season, or the likelihood that damage will exceed $1,500 if preventive action is not taken, or a documented history of at least $1,500 damage annually in previous years.

106.11(3) Depredation management plans. Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by the field employee in consultation with the producer.

a. The goal of the management plan will be to reduce damage below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, temporary fencing, allowing more hunters, increasing

the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of these measures, plus permanent fencing where necessary.

(3) Depredation permits to shoot deer may be issued to temporarily reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the field employee of the wildlife bureau and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) Depredation permits. Two types of depredation permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to hunters for the regular deer license fee to be used during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than two depredation licenses. Licenses will be sold by designated department field employees.

(3) Depredation licenses issued to the producer or producer's family member may be the one free license for which the producer family is eligible annually.

(4) Depredation licenses will be valid only for antlerless deer, unless otherwise specified in the management plan, regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

(5) Hunters may keep any deer legally tagged with a depredation license.

(6) All other regulations for the hunting season specified on the license will apply.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation), and to other agricultural producers.

(1) Deer shooting permits will be issued at no cost to the producer.

(2) The producer or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31 may be valid for taking antlered deer, antlerless deer or any deer, depending on the nature of the damage. Permits available to other agricultural producers will allow taking deer from September 1 through October 31.

(4) The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

(5) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

(6) Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.

c. Deer depredation licenses and shooting permits will be valid only on the land where damage is occurring or the immediately adjacent property. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

d. Depredation licenses and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

e. Depredation licenses and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd.

106.11(5) Disposal. It shall be the producer's responsibility to see that all deer are field dressed, tagged with a DNR salvage tag, and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate disposal of deer offered to the public through the local conservation officer. Charitable organizations will have the first opportunity to take deer offered to the public. No producer can keep more than two deer taken under special depredation permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7573A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, Otter and Spotted Skunk Seasons," Iowa Administrative Code.

These rules give the regulations for taking furbearers (except groundhog) and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as ARC 7386A. A public hearing was held on August 14, 1997. No written or verbal comments were received. These amendments are identical to those published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87 and 481A.90.

This amendment will become effective November 12, 1997.

The following amendment is adopted.

Amend subrule 108.7(2) as follows:

108.7(2) Trapping near beaver lodges and dens. There will be no trapping within ten yards of active or inactive beaver lodges or dens in certain areas described as ~~follows:~~ *those*

NATURAL RESOURCE COMMISSION[571](cont'd)

portions of the Cedar River and Indian Creek floodplains enclosed by Highways 30, 151, Business 151 and I-380 in Linn County.

~~a. Area one. All federal and state-owned lands or waters of the Red Rock Reservoir in Marion, Polk, and Warren Counties.~~

~~b. Area two. That portion of the Middle Raccoon River floodplain in Guthrie County bounded by State Highway 141 on the north and State Highway 44 on the south.~~

~~c. Area three. That portion of the Iowa River floodplain in Tama, Benton, and Iowa counties bounded by U.S. Highway 63 on the west and State Highway 21 on the east.~~

~~d. Area four. Those portions of the Boone and Des Moines River floodplain in Webster and Hamilton counties bounded by U.S. Highway 20 on the north and State Highway 175 on the south.~~

~~e. Area five. All federal and state-owned lands or waters of Rathbun Reservoir in Appanoose, Lucas, Monroe and Wayne counties, including Brown's Slough and Colyn areas in Lucas county.~~

~~f. Area six. That portion of the Little Sioux River floodplain in Cherokee, Clay and Buena Vista counties bounded by Cherokee County Road C16 on the west and south and U.S. Highway 71 on the east.~~

~~g. Area seven. That portion of the Wapsipinicon River floodplain in Bremer County bounded by U.S. Highway 63 on the north and U.S. Highway 3 on the south, and the public lands associated with the Sweet Marsh Wildlife Management Area.~~

~~h. Area eight. That portion of the Wapsipinicon River floodplain in Linn and Jones counties bounded by Linn County Road D66 on the north and Jones County Road E34 on the south.~~

~~i. Area nine. That portion of the Nodaway River floodplain in Cass and Montgomery counties bounded by Cass County Road N28 on the north and Montgomery County Road H46 on the south.~~

~~j. Area ten. That portion of the Cedar River floodplain between State Highway 9 and the Iowa-Minnesota state line.~~

~~k. Area eleven. That portion of the Winnebago River floodplain between Cerro Gordo County Road S18 and U.S. Highway 18.~~

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7555A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 155A.13, the Iowa Board of Pharmacy Examiners hereby rescinds Chapter 6, "General Pharmacy Licenses," and adopts a new Chapter 6, "General Pharmacy Licenses," Iowa Administrative Code.

The rules identify requirements for pharmacy personnel and their responsibilities, equipment, space, and reference requirements, record-keeping and record retention requirements, and drug procurement, storage, and security requirements in a general pharmacy setting.

Notice of Intended Action was published in the July 16, 1997, Iowa Administrative Bulletin as **ARC 7366A**. The adopted rules differ from those published under Notice by minor changes made to clarify the intent of requirements. Subrule 6.2(1), paragraph "c," is changed to clearly indicate the pharmacist's responsibility for all drug dispensing functions performed by pharmacy personnel, and rule 657—6.3(155A), numbered paragraph "6," is changed to indicate a choice of either antidote information or the telephone number of a poison control center, removing the designation "nearest regional" center.

The rules were approved during the September 10, 1997, meeting of the Board of Pharmacy Examiners.

These rules will become effective on November 12, 1997.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

The following rules are adopted.

Rescind **657—Chapter 6** and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
GENERAL PHARMACY LICENSES

657—6.1(155A) Applicability. A general pharmacy is a location where a pharmacist practices in accordance with pharmacy laws. This chapter does not apply to hospital pharmacy licenses issued pursuant to 657—Chapter 7.

657—6.2(155A) Personnel.

6.2(1) Pharmacist in charge. Each pharmacy shall have one pharmacist in charge who is responsible for, at a minimum, the following:

a. Ensuring that a pharmacist performs prospective drug review as specified in rule 657—8.19(155A);

b. Ensuring that a pharmacist provides patient counseling as specified in rule 657—8.20(155A);

c. Dispensing drugs to patients, including any packaging, preparation, compounding, and labeling of the drug which is performed by pharmacy personnel;

d. Delivering drugs to the patient or the patient's agent;

e. Ensuring that patient medication records are maintained as specified in rule 657—8.18(155A);

f. Training pharmacy technicians and supportive personnel;

g. Establishing policies for procurement of prescription drugs and devices and other products dispensed from the pharmacy;

h. Disposing of and distributing drugs from the pharmacy;

i. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations;

j. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs;

k. Legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, or regulations governing the practice of pharmacy.

6.2(2) Pharmacists. The pharmacist in charge shall be assisted by a sufficient number of additional licensed pharmacists as may be required to operate the pharmacy competent-

ly, safely, legally, and adequately to meet the needs of the patients of the pharmacy.

a. Pharmacists shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

b. Pharmacists are solely responsible for the direct supervision of pharmacy technicians and for designating and delegating duties pursuant to 657—Chapter 22 and rule 657—8.1(155A).

c. All pharmacists shall be responsible for complying with state and federal laws or rules governing the practice of pharmacy.

6.2(3) Other personnel.

a. Pharmacist-interns, pursuant to the requirements and limitations contained in 657—Chapter 4, shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

b. Pharmacy technicians and other support personnel, pursuant to the requirements and limitations contained in 657—Chapter 22, shall assist the pharmacist in charge in meeting the responsibilities identified in subrule 6.2(1).

657—6.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following:

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
   - United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
   - Facts and Comparisons Patient Drug Facts; or
   - Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
   - Phillip D. Hansten's Drug Interactions; or
   - Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
   - Facts and Comparisons with current supplements;
   - United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
   - American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
   - Approved Drugs Products With Therapeutic Equivalence Evaluations (FDA Orange Book);
   - ABC - Approved Bioequivalency Codes; or
   - USP DI, Volume III.
6. Basic antidote information or the telephone number of a poison control center.
7. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

657—6.4(155A) Prescription department equipment. The prescription department shall have, as a minimum, the following:

1. Measuring devices such as syringes or graduates capable of measuring 1 ml. to 250 ml.;
2. Suitable refrigeration unit. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration;
3. Other equipment as necessary for the particular practice of pharmacy.

657—6.5(155A) Environment.

6.5(1) Space, equipment, and supplies. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy.

6.5(2) Clean and orderly. The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

6.5(3) Sink. A pharmacy shall have a sink with hot and cold running water within the prescription department, available to all pharmacy personnel, and maintained in a sanitary condition.

6.5(4) Counseling area. A pharmacy shall contain an area which is suitable for confidential patient counseling. Such area shall:

a. Be easily accessible to both patients and pharmacists and not allow patient access to prescription drugs;

b. Be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

6.5(5) Lighting and ventilation. The pharmacy shall be properly lighted and ventilated.

6.5(6) Temperature. The temperature of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

657—6.6(155A) Security. Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

6.6(1) The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on site except as provided in subrule 6.6(2).

6.6(2) In the temporary absence of the pharmacist, only the pharmacist in charge may designate persons who may be present in the prescription department to perform functions designated by the pharmacist in charge. Activities identified in subrule 6.6(3) may not be performed during such temporary absence of the pharmacist. A temporary absence is an absence of short duration not to exceed two hours, during which time the prescription department is closed.

6.6(3) Activities which shall not be designated and shall not be performed during the temporary absence of the pharmacist include:

a. Dispensing or distributing any prescription medications to patients or others.

b. Providing the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order.

c. Conducting prospective drug use review or evaluating a patient's medication record for purposes identified in rule 657—8.19(155A).

d. Providing patient counseling, consultation, or patient-specific drug information.

e. Making decisions that require a pharmacist's professional judgment such as interpreting or applying information.

f. Prescription transfers to or from other pharmacies.

657—6.7(155A) Procurement and storage of drugs. The pharmacist in charge shall have the responsibility for the procurement and storage of drugs.

6.7(1) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a secure storage area.

6.7(2) All drugs shall be stored at the proper temperature, as defined by the following terms:

PHARMACY EXAMINERS BOARD[657](cont'd)

a. Controlled room temperature — temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. Cool — temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;

c. Refrigerate — temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

d. Freeze — temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

6.7(3) Out-of-date drugs or devices.

a. Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

b. Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined until such drugs or devices are disposed of properly.

657—6.8(155A) Records. Every inventory or other record required to be kept under Iowa Code chapters 124 and 155A or 657—Chapter 6 shall be kept at the licensed location of the pharmacy and be available for inspection and copying by the board or its representative for at least two years from the date of the inventory or record except as otherwise required in this rule. Controlled substance records shall be maintained in a readily retrievable manner in accordance with federal requirements. Those requirements, in summary, are as follows:

6.8(1) Controlled substance records shall be maintained in a manner to establish receipt and distribution of all controlled substances;

6.8(2) Records of controlled substances in Schedule II shall be maintained separately from records of controlled substances in Schedules III, IV, and V and all other records;

6.8(3) A Schedule V nonprescription registry book shall be maintained in accordance with 657—subrule 10.13(13).

6.8(4) Invoices involving the distribution of Schedule III, IV, or V controlled substances to another pharmacy or practitioner must show the actual date of distribution; the name, strength, and quantity of controlled substances distributed; the name, address, and DEA registration number of the distributing pharmacy and of the practitioner or pharmacy receiving the controlled substances;

6.8(5) Copy 1 of DEA Order Form 222, furnished by the pharmacy or practitioner to whom Schedule II controlled substances are distributed, shall be maintained by the distributing pharmacy and shall show the quantity of controlled substances distributed and the actual date of distribution;

6.8(6) Copy 3 of DEA Order Form 222 shall be properly dated, initialed, and filed and shall include all copies of each unaccepted or defective order form and any attached statements or other documents;

6.8(7) If controlled substances, prescription drugs, or nonprescription drug items are listed on the same record, the controlled substances shall be asterisked, red-lined, or in some other manner readily identifiable from all other items appearing on the records;

6.8(8) Suppliers' invoices of prescription drugs and controlled substances shall clearly record the actual date of receipt by the pharmacist or other responsible individual;

6.8(9) Suppliers' credit memos for controlled substances and prescription drugs shall be maintained;

6.8(10) A biennial inventory of controlled substances shall be maintained for a minimum of four years from the date of the inventory;

6.8(11) Reports of theft or significant loss of controlled substances shall be maintained;

6.8(12) Reports of surrender or destruction of controlled substances shall be maintained;

6.8(13) Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record; and

b. The data processing system is capable of producing a hard copy of the record upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

657—6.9(126) Return of drugs and appliances. For the protection of the public health and safety, prescription drugs shall not be returned, exchanged, or resold unless, in the professional judgment of the pharmacist, the integrity of the prescription drug has not in any way been compromised. Prescription drugs may, however, be returned and reused as authorized in 657—subrule 8.9(6). No items of personal contact nature which have been removed from the original package or container after sale shall be accepted for return, exchanged, or resold by any pharmacist.

These rules are intended to implement Iowa Code sections 124.303, 124.306 to 124.308, 126.10, 155A.13, 155A.31, 155A.32, and 155A.35.

[Filed 9/16/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7556A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 155A.13, the Iowa Board of Pharmacy Examiners hereby amends Chapter 7, "Hospital Pharmacy Licenses," Iowa Administrative Code.

The amendment revises the list of required references to be maintained by the pharmacy, providing options for the format (printed or electronic) of the various references and permitting the pharmacist in charge more latitude to determine preferred references appropriate to the needs of the practice.

Notice of Intended Action was published in the July 16, 1997, Iowa Administrative Bulletin as **ARC 7367A**. The adopted rule differs from that published under Notice by minor changes made to clarify the intent of the requirement in numbered paragraph "8": Either antidote information or the telephone number of any poison control center shall be available.

The amendment was approved during the September 10, 1997, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on November 12, 1997.

This amendment is intended to implement Iowa Code section 155A.31.

The following amendment is adopted.

PHARMACY EXAMINERS BOARD[657](cont'd)

Rescind rule 657—7.3(155A) and adopt the following new rule in lieu thereof:

657—7.3(155A) Reference library. References may be printed or computer-accessed. A reference library shall be maintained which includes, as a minimum, one reference from each of the following:

1. Current Iowa pharmacy laws, rules, and regulations.
2. A patient information reference, updated at least annually, such as:
   - United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient);
   - Facts and Comparisons Patient Drug Facts; or
   - Leaflets which provide patient information in compliance with rule 657—8.20(155A).
3. A current reference on drug interactions, such as:
   - Phillip D. Hansten's Drug Interactions; or
   - Facts and Comparisons Drug Interactions.
4. A general information reference, updated at least annually, such as:
   - Facts and Comparisons with current supplements;
   - United States Pharmacopeia Dispensing Information, Volume I (Drug Information for the Healthcare Provider); or
   - American Hospital Formulary Service with current supplements.
5. A current drug equivalency reference, including supplements, such as:
   - Approved Drugs Products With Therapeutic Equivalence Evaluations;
   - ABC - Approved Bioequivalency Codes; or
   - USP DI, Volume III.
6. A current IV mixing guide such as:
   - Betty Gahart's Intravenous Medications; or
   - Trissel's Handbook on Injectable Drugs.
7. A current drug identification reference such as:
   - Generex;
   - Ident-a-Drug; or
   - Other drug identification reference to enable identification of drugs brought into the facility by patients.
8. Basic antidote information or the telephone number of a poison control center.
9. Additional references as may be necessary for the pharmacist to adequately meet the needs of the patients served.

[Filed 9/16/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7557A

PHARMACY EXAMINERS BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 124.301, 124.306, 147.76, 155A.13, and 155A.35, the Iowa Board of Pharmacy Examiners hereby adopts Chapter 21, "Confidential and Electronic Data in Pharmacy Practice," Iowa Administrative Code.

This new chapter provides for the security, operational procedures, and minimum requirements in pharmacies utilizing electronic processing and exchange of data and defines and delineates confidential data in the practice of pharmacy.

Notice of Intended Action was published in the July 16, 1997, Iowa Administrative Bulletin as ARC 7368A. The adopted rules differ from those published under Notice as follows:

(1) Language in rule 657—21.4(124,155A) has been changed to improve readability. The subrules have been changed to contain sentences rather than phrases connected to the rule.

(2) References to the "practitioner's agent" have been removed from rules 657—21.6(124,155A) and 657—21.7(124,155A) to avoid the erroneous interpretation that a practitioner's agent may be permitted to sign a Schedule II controlled substance prescription.

(3) Rule 657—21.8(124,155A) is changed to comply with recent changes to federal regulations on this subject.

The rules were approved during the September 10, 1997, meeting of the Board of Pharmacy Examiners.

These rules will become effective on November 12, 1997.

These rules are intended to implement Iowa Code sections 124.306, 124.308, 155A.27, and 155A.35.

The following new chapter is adopted.

CHAPTER 21
CONFIDENTIAL AND ELECTRONIC DATA IN PHARMACY PRACTICE

657—21.1(124,155A) Definitions. For the purpose of this chapter, the following definitions shall apply:

"Confidential information" means information accessed or maintained by the pharmacy in the patient's records which contains personally identifiable information including but not limited to prescription and medication information, prescriber name and address, diagnosis, allergies, disease state, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

"Electronic signature" means a confidential personalized digital key, code, or number used for secure electronic data transmissions which identifies and authenticates the signatory.

"Electronic transmission" means the transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment. Electronic transmission includes but is not limited to transmission by facsimile machine and transmission by computer link, modem, or other computer communication device.

"Personally identifiable information" means any information contained in the patient record which could identify the patient including but not limited to name, address, telephone number, and social security number.

"Prescription drug order" means a lawful order of a practitioner for a drug or device for a specific patient that is communicated to a pharmacy.

657—21.2(124,155A) Confidentiality and security of patient records and prescription drug orders.

21.2(1) Confidential information. As provided in 657—subrule 8.5(5), confidential information in the patient record, including the contents of any prescription or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient; the nature, extent, or degree of illness suffered by any patient; or any medical in-

formation furnished by the prescriber, may be released only as follows:

a. Pursuant to the express written consent or release of the patient or the order or direction of a court.

b. To the patient or the patient's authorized representative.

c. To the prescriber or other licensed practitioner then caring for the patient.

d. To another licensed pharmacist where the best interests of the patient require such release.

e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

21.2(2) Exceptions. Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

a. Transferring a prescription to another pharmacy.

b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is marked "For Information Purposes Only."

c. Providing drug therapy information to physicians or other authorized prescribers for their patients.

21.2(3) Storage system security and safeguards. To maintain the integrity and confidentiality of patient records and prescription drug orders, any system or computer utilized shall have adequate security including system safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records and prescription drug orders. Once a drug has been dispensed, any alterations in either the prescription drug order data or the patient record shall be documented and shall include the identification of all pharmacy personnel who were involved in making the alteration as well as the responsible pharmacist.

657—21.3(124,155A) Manner of issuance of a prescription drug order. A prescription drug order may be transmitted from a prescriber to a pharmacy in written form, orally including telephone voice communication, or by electronic transmission in accordance with applicable federal and state law and rules or guidelines of the board.

21.3(1) Verification of prescription drug order. The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of any prescription drug order consistent with federal and state law and rules and guidelines of the board. In exercising professional judgment, the prescribing practitioner and the pharmacist shall take adequate measures to guard against the diversion of prescription drugs and controlled substances through prescription forgeries.

21.3(2) Transmitting agent. The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order orally or by electronic transmission provided that the identity of the transmitting agent is included in the order.

657—21.4(124,155A) Computer-to-computer transmission of a prescription. Prescription drug orders, excluding orders for controlled substances, may be communicated directly from a prescriber's computer to a pharmacy's computer by electronic transmission.

21.4(1) Orders shall be sent only to the pharmacy of the patient's choice with no unauthorized intervening person or other entity controlling, screening, or otherwise manipulating the prescription drug order or having access to it.

21.4(2) The electronically transmitted order shall identify the transmitter's telephone number for verbal confirmation, the time and date of transmission, and the pharmacy intended to receive the transmission as well as any other information required by federal or state law or rules or guidelines of the board.

21.4(3) Orders shall be transmitted only by an authorized prescriber or the prescriber's agent and shall include the prescriber's electronic signature.

21.4(4) The electronic transmission shall be deemed the original prescription drug order provided it meets the requirements of this rule.

657—21.5(124,155A) Facsimile transmission of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription transmitted to the pharmacy by the prescribing practitioner or the practitioner's agent.

21.5(1) Prescription requirements. The transmitted prescription drug order:

a. Shall serve as the original prescription.

b. Shall be maintained for a minimum of two years from the date of last fill or refill.

c. Shall contain all information required by Iowa Code section 155A.27.

21.5(2) Legitimate purpose. The pharmacist shall ensure that the prescription has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice.

21.5(3) Verifying authenticity of a transmitted prescription. The pharmacist shall ensure the validity of the prescription as to its source of origin. Measures to be considered in authenticating prescription drug orders received via electronic transmission include:

a. Maintenance of a practitioner's facsimile number reference or other electronic signature file.

b. Verification of the telephone number of the originating facsimile equipment.

c. Telephone verification with the practitioner's office that the prescription was both written by the practitioner and transmitted by the practitioner or the practitioner's authorized agent.

d. Other efforts which, in the professional judgment of the pharmacist, may be necessary to ensure the transmission was initiated by the prescriber.

657—21.6(124,155A) Prescription drug orders for Schedule II controlled substances. A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner provided the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance. The original prescription shall be verified against the transmission at the time the substance is actually dispensed, shall be properly annotated, and shall be retained for filing.

657—21.7(124,155A) Prescription drug orders for Schedule II controlled substances—emergency situations. A pharmacist may, in an emergency situation as defined in 657—subrule 10.13(5), dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner pursuant to the requirements of 657—10.13(124). The facsimile or a print of the electronic

PHARMACY EXAMINERS BOARD[657](cont'd)

transmission shall serve as the temporary written record required in 657—subrule 10.13(2).

657—21.8(124,155A) Facsimile transmission of a prescription for Schedule II narcotic substances—parenteral. A prescription for a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner's agent to the pharmacy via facsimile.

21.8(1) The facsimile serves as the original written prescription.

21.8(2) The facsimile transmission of a prescription drug order for oral dosage units of Schedule II narcotic substances is not authorized by this rule.

657—21.9(124,155A) Facsimile transmission of Schedule II controlled substances—long-term care facility patients. A prescription for any Schedule II controlled substance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy via facsimile.

21.9(1) The facsimile serves as the original written prescription.

21.9(2) The patient's address on the prescription shall indicate that the addressed location is a long-term care facility.

657—21.10(124,155A) Facsimile transmission of Schedule II controlled substances—hospice patients. A prescription for any Schedule II controlled substance for a resident of a hospice certified by Medicare under Title XVIII or licensed pursuant to Iowa Code chapter 135J may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy via facsimile.

21.10(1) The facsimile serves as the original written prescription.

21.10(2) The practitioner or the practitioner's agent shall note on the prescription that the patient is a hospice patient.

These rules are intended to implement Iowa Code sections 124.306, 124.308, 155A.27, and 155A.35.

[Filed 9/16/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7580A

PROFESSIONAL LICENSURE DIVISION[645]

BOARD OF RESPIRATORY CARE EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby amends Chapter 260, "Respiratory Care Practitioners," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 1997, as ARC 7389A. A public hearing was held on August 7, 1997, with no written or verbal comments received. The only changes made to the Notice of Intended Action were the dates for renewal and continuing education compliance period in subrules 260.7(1) and 260.13(1).

These amendments were approved during the September 11, 1997, meeting of the Board of Respiratory Care Examiners.

The amendments define terms, establish language for temporary and permanent licensure, renewals, reinstatements, and continuing education. The amendments add language for fees, organization and proceedings of the board office, hours, and availability of information.

The Board has determined that the amendments will have no impact on small business within the meaning of Iowa Code section 17A.31.

These amendments will become effective on November 12, 1997.

These amendments are intended to implement Iowa Code chapters 17A, 22, 147, 152B and 272C.

The following amendments are adopted.

Rescind rules **645—260.1(152B)** to **645—260.17(152B)** and adopt new rules **645—260.1(152B)** to **645—260.17(152B)** as follows:

645—260.1(152B) Definitions.

"Accredited sponsor" means a person or an organization sponsoring continuing education activities which has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an accredited sponsor, all continuing education activities of such person or organization may be deemed automatically approved.

"Accredited sponsor number" means the number assigned by the board which identifies an accredited sponsor.

"Administrator" means the administrator of the board of respiratory care examiners.

"Approved program or activity" means a continuing education program or activity meeting the standards set forth in these rules which has received advance approval by the board pursuant to these rules.

"Board" means the board of respiratory care examiners.

"Department" means the Iowa department of public health.

"Hour" of continuing education means 50 minutes of didactic instruction or independent study.

645—260.2(152B) Availability of information. All information regarding rules, forms, time and place of meetings, minutes of meetings, and records of hearings is available to the public between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Written information may be obtained from the Iowa Board of Respiratory Care Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. Inquiries may be made by E-mail address for the board of respiratory care examiners to Khoover@idph.state.ia.us.

645—260.3(147,152B) Organization and proceedings.

260.3(1) The board consists of five members appointed by the governor and confirmed by the senate. The board shall include one licensed physician with training in respiratory care, three respiratory care practitioners who have practiced respiratory care for a minimum of six years immediately preceding their appointment to the board and who are recommended by the society for respiratory care, and one member who is not licensed to practice medicine or respiratory care and who shall represent the general public. A majority of the members of the board shall constitute a quorum.

260.3(2) A chairperson, vice chairperson, and secretary shall be elected at the first meeting after April 30 of each year.

260.3(3) The board shall hold at least an annual meeting and may hold additional meetings called by the chairperson or by a majority of its members. The chairperson shall designate the date, place, and time prior to each meeting of the board. The board shall follow the latest edition of Robert's Revised Rules of Order at its meeting whenever any objection is made as to the manner in which it proceeds at a meeting.

645—260.4(152B) Requirements for temporary licensure.

260.4(1) Applicants who have not passed the registry examination for respiratory therapists administered by the National Board for Respiratory Care or an entry level certification examination for respiratory therapy technicians administered by the National Board for Respiratory Care shall meet the following requirements prior to receiving a temporary license:

a. The applicant shall complete and submit to the board the application form provided by the board.

b. The applicant shall verify on a form provided by the board that the applicant is presently functioning in the capacity of a respiratory care practitioner as defined by Iowa Code chapter 152B.

260.4(2) Temporary licenses expire on July 1, 1999. An applicant must receive a permanent license on or before July 1, 1999, in order to continue to practice respiratory care.

260.4(3) Applicants who receive a temporary license are subject to all board rules, including continuing education requirements and disciplinary procedures.

645—260.5(152B) Requirements for permanent licensure. An applicant for a license to practice as a respiratory care practitioner shall meet the following requirements:

1. The applicant shall complete and submit to the board the application form provided by the board.

2. The applicant shall satisfactorily complete the registry examination for respiratory therapists or respiratory therapy technicians administered by the National Board for Respiratory Care.

3. The applicant shall have successfully completed a respiratory care education program for training respiratory therapists.

645—260.6(152B) Application.

260.6(1) The application form shall be completed in accordance with the instructions contained in the application.

260.6(2) Each application shall be accompanied by a check or money order in the amount required payable to the Iowa Board of Respiratory Care Examiners. This fee is nonrefundable.

260.6(3) No application will be considered by the board until official copies of academic transcripts, supporting documentation and fee(s) have been received by the board.

260.6(4) Applications for licensure which do not meet the minimum criteria for licensure shall be retained by the professional licensure division for a maximum of three years from the date the application was received. Persons whose applications for licensure are more than three years old must submit a new application and applicable fee(s).

260.6(5) An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing to the board within 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing as outlined herein shall specifically delineate the facts to be contested and determined at the hearing.

645—260.7(152B) License renewal.

260.7(1) The biennial license renewal period shall extend from April 1 of each even-numbered year through March 31 of the next even-numbered year.

260.7(2) At least two months prior to the expiration of the license, the board office shall mail a renewal application and continuing education report form to the licensee. Failure to receive the notice shall not relieve the license holder of the obligation to pay biennial renewal fees on or before the renewal date.

a. The licensee shall submit to the board office, 30 days before licensure expiration, the application and continuing education report form with the renewal fee as specified in rule 260.11(152B).

b. When the licensee has satisfactorily completed the requirements for renewal 30 days in advance of the expiration of the previous license, a renewal license shall be issued and mailed to the licensee before expiration of the previous license.

260.7(3) When the licensee has not satisfactorily completed the requirements for renewal before the previous license expired and prior to its becoming delinquent, the licensee shall be assessed a late fee, as specified in rule 260.11(152B).

260.7(4) If the renewal fees are not received by the board within 60 days after the end of the last month of the renewal period, an application for reinstatement must be filed with the board with a reinstatement fee in addition to the renewal fee and the penalty fee outlined in subrule 260.7(1) and rule 260.11(152B).

645—260.8(152B) Inactive license. Licensees who do not practice respiratory care may be granted a waiver of compliance with continuing education requirements. The licensees shall apply in writing to the board requesting such status. The request shall contain a statement that the licensees will not hold themselves out to the public as being licensed respiratory care practitioners or practice respiratory care during the time the waiver is in effect. Inactive licensees shall pay the reinstatement fees as provided in subrule 260.11(5).

645—260.9(152B) Reinstatement of an inactive license.

260.9(1) Inactive licensure reinstatement. Inactive practitioners who have been granted a waiver of compliance as provided in rule 260.8(152B) shall, prior to practicing respiratory care in the state of Iowa, satisfy the following requirements for reinstatement.

a. Submit written application for reinstatement on a form provided by the board.

b. Furnish, in addition to the application, evidence of one of the following:

(1) The full-time practice of respiratory care in another state of the United States or District of Columbia and completion of continuing education for each year of inactive status substantially equivalent as determined by the board to that required under these rules; or

(2) Completion of a total number of hours of approved continuing education computed by multiplying 15 by the number of years the inactive status has been in effect not to exceed 75 hours; or

(3) Successful completion of the approved entry level examination conducted within one year prior to filing of the application for reinstatement; or

(4) Successful completion of a minimum 75-hour refresher course from a school accredited by the Joint Review Committee for Respiratory Care Education within one year prior to filing of the application for reinstatement.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Payment of the current biennial license renewal fee and reinstatement fee when applying for reinstatement of an inactive license as provided in rule 260.11(152B).

260.9(2) Reserved.

645—260.10(152B) Reinstatement of lapsed licenses.

260.10(1) A license shall be considered lapsed if not renewed within 30 days of the renewal date.

260.10(2) A licensee who wishes to reinstate a lapsed license shall pay past due renewal fees to a maximum of four years, a reinstatement fee and penalty fees.

260.10(3) Continuing education requirements for the period of time the license was lapsed are not waived.

260.10(4) Application for reinstatement shall be made on a form provided by the board.

645—260.11(152B) Fees.

260.11(1) Application fee for a license to practice as a respiratory care practitioner is $75.

260.11(2) Biennial renewal fee for a license to practice as a respiratory care practitioner is $50.

260.11(3) Penalty fee for late payment of renewal fee is $25.

260.11(4) Penalty fee for earning continuing education late is $25.

260.11(5) Reinstatement fee is $25.

260.11(6) Fee for duplicate license is $10.

260.11(7) Fee for verification of licensure is $10.

260.11(8) All fees are nonrefundable.

645—260.12(152B) Students/graduates.

260.12(1) A student enrolled in a respiratory therapy training program who is employed in an organized training program in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for a limited period as follows:

1. For the duration of the respiratory therapist program, not to exceed four years.
2. For the duration of the respiratory technician program, not to exceed two years.

260.12(2) A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direction and immediate supervision of a respiratory care practitioner for one year. The graduate shall be identified as a "respiratory care practitioner-license applicant."

645—260.13(152B) Continuing education requirements for licensees.

260.13(1) The biennial compliance period shall extend from April 1 of each even-numbered year to March 31 of the next even-numbered year. Compliance with the requirement of continuing education is a prerequisite for license renewal to practice as a respiratory care practitioner in each subsequent licensee renewal period.

260.13(2) Thirty continuing education hours shall be required for renewal of a license.

260.13(3) Continuing education hours shall be completed in the license period for which the license was issued. Hours of continuing education shall not be carried over into the next continuing education compliance period. Credit will not be accepted for a duplication of continuing education activities within a license period.

260.13(4) It is the responsibility of licensees to finance their own costs of continuing education.

260.13(5) If a licensee is first licensed during the first 12 months of the continuing education compliance period, the licensee shall complete at least 15 hours of continuing education for the first renewal. If a licensee is first licensed during the second 12 months of the continuing education compliance period, the licensee is not required to complete continuing education for the first renewal.

260.13(6) Licensees will be allowed no more than ten hours of approved independent study for continuing education requirements in a given compliance period. Independent, unsupervised self-study must have a posttest to receive credit.

260.13(7) Program presenters will not receive continuing education credit for programs presented. Presenters may request independent study credit for preparation as stated in subrule 260.13(6).

260.13(8) Licensees shall submit a completed report form which documents the completion of continuing education requirements.

645—260.14(152B) Approval of continuing education programs and activities.

260.14(1) A continuing education program shall be eligible for approval if the board determines that the program complies with the following:

Is an organized program of learning; pertains to subject matters which integrally relate to the practice of a respiratory care practitioner; contributes to the professional competency of the licensee; and is conducted by individuals who have education, training, or experience and are considered qualified to present the subject matter of the program, and provides the attendee with a certificate of attendance at the completion of the program.

260.14(2) Continuing education credit may be granted for the successful completion of academic courses which apply to the field of respiratory care. An official transcript indicating successful completion of the course is required to obtain continuing education credit. One academic semester hour equals 15 continuing education hours of credit; one academic quarter hour equals 10 hours of continuing education credit.

645—260.15(152B) Procedures for approval of continuing education programs.

260.15(1) Prior approval of continuing education programs. An organization, educational institution, agency, individual, or licensee that desires approval of a continuing education program prior to its presentation shall apply for approval to the respiratory care office at least 30 days in advance of the commencement of the program on a form provided by the department, including a time schedule, outline and the qualifications of the instructors. The respiratory care office shall approve or deny the application in writing.

260.15(2) Review of continuing education programs. The board may monitor and review any continuing education program already approved. Upon evidence of significant variation in the program presented from the program approved, the board may disapprove all or any part of the approved hours granted the program.

260.15(3) Postapproval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 30 days after completion of such activity, an application for credit. This shall include a brief résumé of the activity, its dates, time, subjects, instructors and their qualifications, and the number of credit hours requested and certificate of atten-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

dance. A licensee not complying with the requirements of this rule may be denied credit for such activity.

260.15(4) Retention of records. The licensee shall maintain a record of verification of attendance for at least four years from the date of completion of the continuing education program.

260.15(5) Approval of accredited sponsors.

a. An institution, organization, agency or individual desiring to be designated as an approved, accredited sponsor of continuing education activities shall apply on a form provided by the board. If approved by the board, such institution, organization, agency or individual shall be designated as an approved, accredited sponsor of continuing education activities; and the activities of such an approved sponsor which are relevant to respiratory care shall be deemed automatically approved for continuing education credit. Each accredited sponsor will be assigned a number for identification.

b. All approved, accredited sponsors shall issue a certificate of attendance to each licensee who attends a continuing education activity. The certificate shall include sponsor name and number; date of program; name of participant; total number of clock hours excluding introductions, breaks, and meals; program title and presenter; program site; and whether the program is approved for respiratory care.

c. All approved, accredited sponsors shall maintain a copy of the continuing education activity, a list of attendees, license number, and number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

260.15(6) Report of licensee. Each licensee shall file, if requested, a certificate of attendance form signed by the educational institution or organization sponsoring the continuing education. The report shall be sent to the Board of Respiratory Care Examiners, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

645—260.16(152B) Hearings regarding continuing education. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for a continuing education activity, the applicant or licensee shall have the right to request a hearing. The request must be sent within 20 days after receipt of the notification of denial. The hearing shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board. The final decision shall be rendered by the board.

645—260.17(152B) Disability or illness. The board may, in individual cases involving disability or illness, grant waivers of the minimum education requirements or extensions of time within which to fulfill the same or make the required reports. A written request for waiver or extension of time shall be submitted by the licensee and shall be accompanied by a verifying document signed by a physician licensed by the board of medical examiners or a licensed psychologist. Waivers of the minimum educational requirements or extensions of time within which to fulfill the same may be granted by the board for any period of time not to exceed one calendar year. In the event that the disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the licensee must reapply for the waiver or extension. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by the board.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7584A

RACING AND GAMING COMMISSION[491]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Iowa Racing and Gaming Commission hereby adopts amendments to 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 changes the definition of "Gaming official" to refer to racing and racetrack enclosures as well as riverboat.

Item 2 moves language from Chapter 25 into Chapter 4.

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.

A public hearing was held on September 2, 1997. No oral or written comments were received. The adopted amendments are identical to those published under Notice of Intended Action in the August 13, 1997, Iowa Administrative Bulletin as **ARC 7443A**.

These amendments will become effective November 12, 1997.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are adopted.

ITEM 1. 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 2. 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."

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

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 statute 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) Authority to 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.

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 and 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)**.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7583A

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 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.

Notice of Intended Action was published in IAB, Volume XX, Number 4, on August 13, 1997, page 356, as ARC 7445A.

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

These amendments will become effective November 12, 1997, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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 adopted.

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 tax 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.*

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 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 10 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 avail-

able 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 10 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*:

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~~.

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

ARC 7582A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 422.17(19) and 422.68, the Iowa Department of Revenue and Finance hereby adopts amendments to Chapter 40, "Determination of Net Income," and Chapter 53, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XX, Number 4, on August 13, 1997, page 359, as **ARC 7446A**.

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.

There is a small correction in Item 2, rule 701—40.3(422), numbered paragraph "13." The text in the parentheses refers to Iowa Code section 28.24. The Iowa Code section is corrected to read 28A.24. Other than this correction, these amendments are identical to those published under Notice of Intended Action.

These amendments will become effective November 12, 1997, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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

The following amendments are adopted.

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 systemwide bonds, notes, debentures, and other obligations is-

sued 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).

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 are 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

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

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.

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 28A.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:

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

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 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 rule 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).*

[Filed 9/19/97, effective 11/12/97]
[Published 10/8/97]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/8/97.

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED SEPTEMBER 17, 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. 96-221. FLOM v. STAHLY.

Appeal from the Iowa District Court for Plymouth County, James D. Scott, Judge. **AFFIRMED ON BOTH APPEALS.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by McGiverin, C.J.

(14 pages $5.60)

In 1981 Thomas Stahly, a physician, and his wife, Kathleen, began constructing a large southwestern-style adobe home. The Stahlys planned to live in the house. Dr. Stahly had no previous construction training or experience but did much of the construction himself. The Stahlys moved to West Virginia in 1982 before the house was completed. In 1991, Douglas and Linda Flom became interested in purchasing the house. The Stahlys wrote to Floms and enclosed written materials about the house, including statements regarding the construction of the exterior walls and the heating system. The Floms visited the property several times while the Stahlys were present, and had it inspected. In May 1991, the Stahlys and Floms executed a written contract for the purchase of the house and acreage. The written materials earlier provided by the Stahlys were incorporated by reference into the contract. Thereafter, the Floms undertook the completion of the house. Extensive defects in the structure and heating system were eventually discovered necessitating numerous repairs. In December 1994 the Floms filed a petition against the Stahlys alleging breach of express warranty, breach of implied warranty, negligent misrepresentation, and negligent construction. The Stahlys asserted affirmative defenses of comparative negligence and assumption of risk. The trial court determined the written materials incorporated into the contract constituted express warranties and the Stahlys breached those warranties. It awarded the Floms $130,000 based upon the costs of repairing those components covered by the express warranties. The Stahlys appealed and the Floms cross-appealed. **OPINION HOLDS:** I. The theory of express warranty can apply to specific representations or warranties contained in real estate contracts. II. We believe there is substantial evidence that the Stahlys' written materials constituted express warranties and their construction of the home did not conform to those representations. III. Substantial evidence supports the trial court's findings that the failure to use the construction techniques specified in the written materials proximately caused the alleged damages. IV. Because the Floms' claims were contractual in nature, the defense of comparative fault does not apply. V. The trial court did not abuse its discretion in its evidentiary rulings regarding the parties' expert witnesses on the subject of damages. We also believe that the reasonable cost of repairs is an appropriate measure of damages in this case, given the Stahlys' unconventional construction techniques and the nature of the damage. VI. We agree with the trial court that the theory of implied warranty is not applicable in this case because the Stahlys were not builder-vendors and did not construct the home for the purpose of sale. VII. We find no abuse of the trial court's discretion in excluding the Floms' expert witness regarding the cost of tearing out the old heating system. VIII. The trial court properly refused the Floms' request for prefiling interest. We affirm on all issues raised on appeal and cross-appeal.

*Reproduced as submitted by the Court

No. 97-774. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. MEARS.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by McGiverin, C.J. (6 pages $2.40)

This attorney disciplinary proceeding involves respondent Philip B. Mears' handling of two prisoner relief cases. Mears was appointed to investigate a request for postconviction relief by a prisoner and report back to the court within thirty days. Although he met with the prisoner, Mears failed to timely file the report or respond to the prisoner's requests for information about the status of the case. Mears was appointed to represent another prisoner in a postconviction relief action, but because he did not file the application for postconviction relief within the statutory limitations period, the district court and counsel had to spend considerable time resolving a dispute about the timeliness of the application. A division of our Grievance Commission found that Mears' conduct violated the Iowa Code of Professional Responsibility for Lawyers (Code) and recommended that he be publicly reprimanded. **OPINION HOLDS:** I. We conclude that a convincing preponderance of the evidence supports the Commission's findings and conclusions concerning Mears' violations of the Code. II. We are convinced that Mears performs a valuable service for prisoners and faces unique challenges. Nevertheless, the pressures of a busy law practice do not excuse ethical violations. We conclude that the Code violations in this case and Mears' prior disciplinary record concerning neglect of client matters warrant a public reprimand. Costs are taxed to Mears.

No. 97-577. STATE v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Johnson County, William R. Eads, Judge. **WRIT SUSTAINED.** Considered en banc. Opinion by Harris, J. **This opinion was filed August 22, 1997.** (8 pages $3.20)

On August 30, 1996, Eric Shaw was fatally shot by Iowa City police officer Jeffrey Gillaspie while Shaw was peaceably on the premises of his parents' business. Gillaspie was investigating a suspected break-in. Following an extensive investigation by the Iowa division of criminal investigation, the local county attorney, J. Patrick White, publicly announced his conclusion that Gillaspie had been negligent but had committed no crime. Accordingly White said he would not press charges or convene a grand jury to consider them. One member of the 1996 grand jury, Lori Klockau, disagreed with White's decision. She assembled other grand jurors to discuss the matter with White, who strongly defended his actions. At some point, White stated that he would not prosecute even if the grand jury returned an indictment. Klockau informed the other 1996 grand jurors of their power to convene by a majority vote. Although the 1996 grand jurors continued to visit about the case, in the end they did not meet on the Shaw matter. Klockau published her concerns in the press and pursued the matter into 1997. Judge William R. Eads eventually became involved at his own instance and suggested that Klockau request him to act in the matter. As the result of the request from Klockau, Judge Eads issued an order on March 3, 1997, requiring the 1997 grand jury, when it later convened, to investigate the Shaw matter. On

No. 97-577. STATE v. IOWA DIST. CT. (continued)

March 7, Chief Judge August F. Honsell entered a routine order calling for the impaneling of the 1997 grand jury the following April 8. On April 1, Judge Eads appointed special counsel, Joseph Johnston, to handle all aspects of the Shaw case. The State filed the present certiorari proceeding, challenging Judge Eads' orders directing a grand jury to investigate the Shaw matter, disqualifying White, and appointing Johnston as special prosecutor. We granted the writ and ordered a limited remand for ruling on the State's reconsideration motion. On reconsideration, the district court confirmed its rulings and listed its reasons for appointing special counsel.. **OPINION HOLDS:** I. The question before us is not whether criminal charges should be pressed against the officer. The question instead is whether the district court inappropriately became involved in the prosecutorial process. The decision whether to bring criminal charges is at the heart of the prosecutorial function. A county attorney owes an ethical duty to do justice, not only for the accusers, but also for the accused. Whether there was probable cause to prosecute Gillaspie was a matter for assessment by the prosecutor, not the court. II. It was inappropriate for the district court to direct the grand jury to specifically inquire into the Shaw matter. This was a decision for the county attorney or the grand jury to make. It was not a judicial function. Other safeguards are in place to review a disastrous prosecutorial decision. III. It was even less appropriate for the district court to claim authority to supplant White with a special counsel. The inherent power claimed by the court for substituting prosecutors was surely inappropriately executed here because White could not be said to be disqualified, certainly not involuntarily. Any authority to appoint a special prosecutor does not rest solely on dissatisfaction with a prosecutor's professional judgment or performance, and the district court's factual reasons do not justify the replacement of White. It seems highly unlikely that White would be called as a witness based upon his knowledge of the case. Additionally, White's controversial professional judgment call does not constitute a conflict of interest. IV. We sustain the writ because the orders amounted to a direct affront to a prosecutorial decision in which a court should take no part. A judge should be society's last person to respond to public clamor. We cannot overemphasize that we do not suggest—much less order—that this matter be presented to the grand jury for consideration. We leave the matter, as the district court should have, in the hands of those elected for that task. However, if it is so submitted, we assume White's request that the attorney general's office proceed in this matter will be honored. The case is remanded for an order quashing the challenged district court orders.

No. 96-959. STATE v. BROWN.

Appeal from the Iowa District Court for Cedar County, Bobbi M. Alpers and Patrick J. Madden, Judges. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Harris, J. (9 pages $3.60)

Law enforcement officers arrested Brown at his home after receiving a 911 call that he had assaulted Kristy Brown. The officers recovered a BB gun, a .20 gauge shotgun, and a .22 caliber rifle from the home. The court overruled

No. 96-959. STATE v. BROWN. (continued)

Brown's motion in limine to exclude evidence of his criminal record or testimony that he had gone hunting and used guns on prior occasions. Neither Kristy nor Brown testified at trial. Brown appeals his convictions of domestic abuse causing injury, and possession of a firearm by a felon. **OPINION HOLDS:** I. There was sufficient evidence for a rational jury to find Brown assaulted Kristy causing her bodily injury and that they were family or household members who resided together. II. The officers' testimony about Kristy's and Brown's statements regarding the guns and the proximity of the shotgun and rifle to Brown was sufficient evidence to reasonably infer Brown had dominion and control over one or both guns. III. The testimony that Brown had possessed guns and gone hunting or made statements about hunting was admissible because: (1) it was relevant to prove motive for possessing guns, and (2) its probative value outweighed any unfair prejudice. IV. Brown cannot appeal the denial of his motion to exclude evidence of his criminal record because he did not testify at trial.

No. 95-1959. HUBER v. WATSON.

Appeal from the Iowa District Court for Muscatine County, C.H. Pelton, Judge. **REVERSED AND REMANDED WITH INSTRUCTIONS.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Harris, J. (12 pages $4.80)

Marion Huber was diagnosed with cancer of the lining of the lungs in November 1988, presumably caused by asbestos exposure. Marion and his wife, Avis, contracted with Frank Watson and John Gajdel to represent them in a products liability claim. Watson and Gajdel had a referral relationship with Baron & Budd, an out-of-state law firm specializing in asbestos claims (hereinafter collectively referred to as the attorney defendants). Baron & Budd was allegedly responsible for handling all of the trial preparation, including product identification. In January 1989, Marion died of the cancer and Avis died in January 1990. In May 1990 the attorney defendants filed an asbestos-related lawsuit. The petition named only five asbestos defendants, but an unfiled petition prepared by Baron & Budd named seventeen asbestos defendants. In 1991 the court granted the asbestos defendants summary judgment because the attorney defendants had failed to meet the product identification deadline isolating the likely cause of the exposure. Robert Huber sued, claiming the attorney defendants were negligent in handling the asbestos case. He claimed he had informed Watson and Gajdel of his investigation of the source of Marion's asbestos exposure, and had determined it was the Muscatine city hall boiler room in 1969. The unfiled petition included the corporate predecessors of the alleged manufacturers and distributors of that asbestos. A jury returned substantial verdicts for the estate. The district court granted attorney defendants' motion for judgment notwithstanding the verdict (JNOV). Robert appeals. **OPINION HOLDS:** I. The district court ruled Robert established only a "possibility" that the unnamed asbestos defendants' products were involved, thereby failing to prove that the attorney defendants' breach in failing to sue them proximately caused injury. We believe a jury could find that the unnamed asbestos defendants

No. 95-1959. HUBER v. WATSON. (continued)

stand in the shoes of those that were said to have provided asbestos products to the city hall and that those corporate predecessors actually did furnish the asbestos. We think the evidence was sufficient to generate a jury question on proximate cause. II. The JNOV cannot be affirmed on any of attorney defendants' fallback arguments because (1) the state-of-the-art defense does not reach the breach of a duty to warn, (2) the jury could have reasonably inferred a corporate predecessor to an unnamed defendant manufactured the asbestos insulation, (3) the judgment was not uncollectible from the asbestos defendants, and (4) a jury could have reasonably concluded defendants breached the applicable standard of care in failing to sue the unnamed asbestos defendants. III. We decline to rule on the attorney defendants' new trial motion. The trial court should first exercise its discretion in the matter. The judgment is reversed and remanded.

No. 96-603. GEORGE A. HORMEL & CO. v. JORDAN.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Neuman, J. (11 pages $4.40)

George A. Hormel & Company (Hormel) hired Gary Jordan in 1984 as a meat processing plant laborer. Jordan's daily routine included heavy lifting and pushing. On September 15, 1988 Jordan was diagnosed by a company physician as having a subluxating shoulder. After a medical examination on October 1, 1991 revealed permanent partial impairment to Jordan's right shoulder, Hormel paid Jordan permanent partial disability benefits. Hormel contested Jordan's claim for interest dating back to September 15, 1988. His arbitration claim with the industrial commissioner alleged a known injury date of October 1, 1991. A deputy industrial commissioner determined that Jordan suffered a work-related cumulative injury which manifested itself on October 1, 1991. The deputy awarded Jordan industrial disability benefits and determined the interest began accruing on October 1, 1991—at the onset of permanency. Hormel's appeal and subsequent petition for judicial review were affirmed. Hormel appealed. **OPINION HOLDS:** I. Substantial record evidence supports the agency's and district court's conclusion that not until October 1, 1991 did Jordan have knowledge of the permanent impairment to his shoulder, nor did he realize the causal impact that injury would have on his job with Hormel. We reject Jordan's invitation to add a third element of "compensability" to the manifestation test for determining the date of the injury. II. With the date of cumulative injury fixed by the commissioner at October 1, 1991, Jordan's claim falls squarely within the two-year statutory period. III. Although the deputy and district court were mistaken in their conclusion that actual notice of injury in 1988 necessarily extended to the cumulative injury Jordan first learned of in 1991, the record reveals that Hormel indeed had actual notice of the developing injury. IV. Substantial evidence supports the overall finding that cumulative work-related trauma caused Jordan's injury.

No. 96-1123. STATE v. TERRY.

Appeal from the Iowa District Court for Scott County, Edward B. de Silva, Jr., C.H. Pelton, Bobbi M. Alpers, and James E. Kelley, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Lavorato, J. (11 pages $4.40)

Mario Terry, a sixteen-year-old juvenile, was the boyfriend of fifteen-year-old Jessica Springsteen. Terry, Springsteen, and a third juvenile were arrested after attacking Springsteen's stepfather in his home. Terry was charged with attempted murder, first-degree burglary, and conspiracy. Prior to trial the district court overruled Terry's motions to suppress his confession and to transfer his case to the juvenile court pursuant to Iowa Code section 232.8(1)(c) (Supp. 1995). Terry now appeals his convictions and sentences for attempted murder and first-degree burglary. **OPINION HOLDS:** I. The district court correctly ruled that Terry had the burden to prove good cause to transfer his case to juvenile court. The legislature did not include language in section 232.8(1)(c) placing the burden on the state, as it did with the analogous statute governing waiver of juvenile proceedings to the district court. In the absence of contrary direction, the movant is ordinarily allocated the burden of proof. II. Terry waived his right to object to the admission of his confession because he failed to file a timely suppression motion and his trial counsel affirmatively consented to its admission during the trial. We do not consider Terry's ineffective-assistance-of-counsel claim because it was raised for the first time in his reply brief.

No. 96-164. McCLENDON v. BECK.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cerro Gordo County, Gilbert K. Bovard, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered by McGiverin, C.J., and Lavorato, Neuman, Andreasen, and Ternus, JJ. Opinion by Neuman, J. (9 pages $3.60)

Plaintiff Betty McClendon suffers from a congenital deformity of the spine. Doctors Edwin Crowell and David Beck performed surgery on her lower back in September 1988. A series of three surgeries followed in 1989 to alleviate continuing pain. McClendon was discharged November 7, 1989, and Beck predicted she would have a good outcome. Her back problems persisted, however, and in August 1990 the doctors performed a fifth operation. McClendon, still suffering back and leg pain, had a postoperative visit with Beck in December 1990. He ruled out further surgery and advised her that the pain would get better over time. McClendon next consulted with Beck on May 3, 1993, concerning her ongoing pain. On June 27, 1994, McClendon filed a medical malpractice action against Crowell, Beck, and North Iowa Mercy Health Center (referred collectively as defendants). Defendants moved for summary judgment, asserting McClendon's claim was time barred. McClendon resisted, claiming (1) the defendants fraudulently concealed her true condition, and (2) she remained in

No. 96-164. McCLENDON v. BECK. (continued)

defendants' continuous care and was unaware until consulting with Beck in May 1993 that her condition would not improve. The district court granted defendants' summary judgment motion. McClendon appealed, and the court of appeals reversed. We granted further review. **OPINION HOLDS:** I. The record defeats McClendon's claimed continuum of care with the doctors after December 1990. The district court did not err by refusing to apply the benefit of the continuous treatment doctrine to toll the statute of limitations. II. Even the most favorable reading of the record does not support McClendon's claim that the doctors concealed the true nature of her condition. Her constant pain following the operations was sufficient to put her on notice of the alleged injury. We vacate the court of appeals decision, and affirm the district court judgment granting the defendants summary judgment.

No. 96-1247. STATE v. BEESON.

Appeal from the Iowa District Court for Calhoun County, William C. Ostlund, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Andreasen, J. (10 pages $4.00)

Defendant, Jamie Allen Beeson, claimed he was threatened with bodily harm and sexual assault by another inmate while he was incarcerated at the North Central Correctional Facility (NCCF). Due to the alleged threat, Beeson maintains he had no alternative but to leave NCCF without authorization. Beeson scaled the perimeter fence at NCCF and departed the facility. The next day he was found hiding in the basement of a Des Moines residence and returned to NCCF. After Beeson received disciplinary sanctions for violating the institutional rule prohibiting escape, he was charged by the State with the crime of escape. The district court denied Beeson's motion to dismiss the charges based on double jeopardy protection. On appeal he argues the disciplinary sanctions for escape and the subsequent criminal prosecution for the escape violated the Double Jeopardy Clause. He also challenges the court's rulings on his motion for a judgment of acquittal, his request and challenge to jury instructions, and his motion for a new trial. **OPINION HOLDS:** I. We choose to follow those circuits that believe *United States v. Halper,* 490 U.S. 453, 109 S. Ct. 1892, 104 L. Ed. 2d 487 (1989), and subsequent decisions do not require modification of the long-standing rule that disciplinary sanctions imposed for violation of prison regulations do not bar subsequent criminal prosecution for the same conduct. II. We find there was substantial evidence to support denial of Beeson's motion for judgment of acquittal. III. We refuse to adopt the revised standard Beeson proposes that would allow the defense of necessity if the defendant puts forth some evidence to some, but not all of the defense's elements. IV. We find the district court properly denied Beeson's request for an instruction stating voluntary absence is a lesser-included offense of escape because those offenses are distinct from each other and contain different elements. V. We find no error in the trial court's denial of Beeson's motion for new trial. We affirm.

No. 96-2126. STATE v. MOORE.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Andreasen, J. (5 pages $2.00)

On appeal we must determine if a deferred judgment that had been expunged must be considered a prior plea or verdict of guilty under Iowa Code section 321J.4 (1995) for license revocation purposes. The trial court concluded it must be so considered and ordered Moore's motor vehicle license be revoked for six years. Moore argues the effect of the expungement is that it is as if the deferred judgment never occurred. He therefore would only have a second operating while intoxicated violation not requiring revocation. **OPINION HOLDS:** The legislature did not intend to expunge all records of a deferred judgment or exonerate a defendant in such cases. A permanent record is kept by the state court administrator in which the existence of a plea or verdict of guilty is implicit. The legislature clearly intended this record be available to the supreme court, judges, magistrates, and county attorneys. Moore has two guilty pleas resulting in judgments of conviction and one guilty plea resulting in a deferred judgment. The district court correctly ordered the department of motor vehicles to revoke Moore's motor vehicle license.

No. 96-696. JONES v. LAKE PARK CARE CENTER, INC.

Appeal from the Iowa District Court for Dickinson County, John P. Duffy, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Andreasen, J. (14 pages $5.60)

Jones brought a breach of contract action against her employer, Lake Park Care Center, Inc. (Care Center) and alleged its sole shareholders and officers, James and Pamela Rogers, intentionally interfered with the contract. The defendants denied the allegations and the Rogers affirmatively urged they were protected by a qualified privilege granted to them as officers and directors. The district court awarded compensatory damages of $320,064 against both the Care Center and the Rogers individually and punitive damages of $50,000 against the Rogers. The defendants appeal. **OPINION HOLDS:** I. Contrary to the Rogers' claim, there is substantial evidence to support the district court's finding that the employee handbook applied to Jones' position as the administrator. Further, the language of the discipline policy in the handbook was sufficiently definite to create an employment contract, and there was no appropriately drafted disclaimer to defeat it. Substantial evidence shows the Care Center breached this contract by summarily discharging Jones. II. The court's findings, conclusions, and award of compensatory damages are supported by substantial evidence in the record. III. The evidence shows the Rogers' actions exceeded the scope of qualified privilege, exposing them to personal liability for interfering with the contractual relationship between the Care Center and Jones. IV. Substantial evidence supports the court's finding that the Rogers' motive in discharging Jones was for improper reasons, and they intentionally interfered with her contract. V. Based on our review of the record, we conclude the district court's award of punitive damages to be supported by the evidence.

No. 95-1876. STATE v. MARTENS.

Appeal from the Iowa District Court for Audubon County, Keith E. Burgett, Judge. **AFFIRMED IN PART, REVERSED AND REMANDED IN PART.** Considered by Harris, P.J., and Lavorato, Neuman, Snell, and Andreasen, JJ. Opinion by Snell, J. (14 pages $5.60)

Martens appeals from convictions of third-degree sexual abuse and failure to affix a drug tax stamp. He contends there was insufficient evidence to show a "sex act" occurred under Iowa Code section 702.17 (1993). He claims that his trial counsel was ineffective in failing to request that the jury be instructed, in response to its question, that pubic hair is not part of the genitalia for purposes of establishing a sex act. Finally, Martens argues that stalks and stems should not have been included in the weight of the marijuana subject to taxation. **OPINION HOLDS:** I. Anatomically, pubic hair is included in the term "genitalia" and if this is what the jury concluded via its general verdict, it made a correct determination. Counsel's failure to object to the court's refusal to further instruct the jury was not prejudicial. II. The victim's testimony that Martens touched her "butt" was not too unspecific and insufficient in totality to identify a sex act within the meaning of the statute. Also, her testimony was unchallenged that Martens touched her pubic hair. III. The proper construction of Iowa Code section 453B.1(3)(b) (1993), is that the gram weight computed under the statute cannot include the weight of marijuana stalks. The State failed to prove that the certified weight, exclusive of marijuana stalk, met the statutory gram weight. Martens' drug stamp conviction is reversed. The case is remanded for new trial on that charge. Martens' conviction for third-degree sexual abuse is affirmed.

No. 96-39. HARPSTER v. STATE.

Appeal from the Iowa District Court for Jones County, Larry J. Conmey, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Snell, J. (15 pages $6.00)

Michael Harpster, an inmate at the Newton Correctional Release Center (CRC), a minimum security unit, left his work detail at a state park. Harpster subsequently pleaded guilty to criminal charges of walking away from a correctional facility and received a six-month sentence and a fine. On the same day of the incident, the Newton CRC issued Harpster a disciplinary notice, citing a violation of the institutional rule prohibiting escape. After a disciplinary hearing subsequent to the criminal prosecution, an administrative law judge (ALJ) found Harpster guilty of committing an escape. Harpster unsuccessfully raised an intoxication defense. The ALJ imposed various sanctions including forfeiture of 2000 days good conduct time. On administrative appeal, the loss of good conduct time was reduced to 1000 days. Harpster filed an application for postconviction relief claiming that the sanction was excessive and improper on both statutory and constitutional grounds. Harpster amended his application to include a double jeopardy claim based upon the criminal prosecution. The district court denied postconviction relief. Harpster appeals. **OPINION HOLDS:** I. Contrary to Harpster's arguments that the ALJ automatically imposed a 2000-day loss of good conduct time, we hold that the ALJ properly exercised discretion regarding sanctions and the sanctions did not violate Iowa law. II. The findings of fact made by the ALJ as indicated in her written decision satisfy the due process

No. 96-39. HARPSTER v. STATE. (continued)

requirement for a written statement of reasons for the discipline imposed. The ALJ's decision also reflects Harpster's intoxication defense was considered and dismissed. A specific written rejection of the defense is unnecessary. III. The penalty imposed was not arbitrary or inflexible, but based upon a determination of the serious nature of the offense and the lack of a credible defense. IV. The penalty imposed by the ALJ is not arbitrary and does not violate due process although it may differ from the penalty imposed for a similar violation at another institution. Legitimate differences exist among institutions justifying the imposition of varying penalties, and statutory and regulatory authority allows for imposition of such a penalty. V. Even if Harpster preserved error, his double jeopardy claim would fail. We affirm.

No. 96-2106. IN RE A.B.

Appeal from the Iowa District Court for Dubuque County, Jane C. Mylrea, Associate Juvenile Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Carter, J. (8 pages $3.20)

M.B. and T.B. were divorced in 1989, and no determination was made concerning child custody. Thereafter, their two children lived with the mother in Iowa. The children were adjudicated in need of assistance in July of 1996, and their temporary custody was placed with their mother subject to the continuing supervision of the Iowa Department of Human Services. The same order granting temporary custody to the mother also authorized summer visitation with the father in Texas. When the children arrived in Texas for visitation with their father in August of 1996, he obtained an ex parte order from a Texas court granting him temporary custody of the children and enjoining the mother from removing them from Texas. At a subsequent hearing, of which the mother had notice but did not attend, the provisions of the ex parte order were confirmed by the Texas court. Acting on the request of the State of Iowa, the Iowa juvenile court issued a rule to show cause to be served on the father, requiring him to give reason why he should not be found in contempt for not returning the children to their mother in Iowa at the conclusion of the summer visitation. After hearing the evidence, the juvenile court concluded the Texas court had jurisdiction to enter the orders granting custody of the children to the father, and it did not find the father in contempt. The Iowa juvenile court declined to order the return of the children to this state for continuing juvenile court involvement and dismissed the pending CINA proceeding as moot. The mother appeals. **OPINION HOLDS:** I. Custody or visitation orders entered by a court granted concurrent jurisdiction under Iowa Code section 232.3 (1995) are only determinative of the rights of the parents *inter se* if and when the juvenile court's placement of the children during their CINA status has been rendered of no further effect by orders of the juvenile court. A court granted concurrent jurisdiction cannot enter orders that conflict with or frustrate the placement that a juvenile court has temporarily established for purposes of a pending CINA proceeding. II. The Texas court did not have jurisdiction under the Uniform Child Custody Jurisdiction Act (UCCJA) to enter a custody order binding on the parents *inter se*. Texas was not the home state of the children, and this case does not fall within one of the other

No. 96-2106. IN RE A.B. (continued)

alternatives for UCCJA jurisdiction. III. It is too restrictive an interpretation of section 232.3 to hold that only Iowa courts may be granted concurrent jurisdiction. IV. Since the Texas court did not have jurisdiction under the UCCJA, the mother was free to challenge the jurisdiction of the Texas court in the Iowa juvenile court. V. Because the juvenile court's finding that the father was not in contempt was induced by an erroneous conclusion of law, we reverse that order. We do not suggest what the ultimate ruling on the contempt issue should be. On remand the district court shall order the father to return the children to Iowa forthwith to submit to the further orders in the pending CINA proceeding.

No. 97-776. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. SCHEETZ.

On review of the report of the Grievance Commission. **ATTORNEY REPRIMANDED.** Considered by Harris, P.J., Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Per curiam. (4 pages $1.60)

This is another disciplinary proceeding involving respondent, James Scheetz. The Grievance Commission found Scheetz violated disciplinary rules by neglecting a client matter and failing to respond to inquiries by the Board of Professional Ethics and Conduct. The Commission recommended Scheetz be suspended for at least sixty days. We review the Commission's findings and recommendation de novo pursuant to Iowa Supreme Court Rule 118.10. **OPINION HOLDS:** We agree with the Commission's finding that Scheetz violated various disciplinary rules. The dilemma that confronts us regarding an appropriate sanction is the reality that, except for one instance of failure to respond to the board's inquiries, the operative facts that constitute the ethical violations in the present case antedate our previous reprimand of Scheetz. We are not convinced that we would have imposed any greater sanction at that time had we been aware of the present violations. Based on these concerns, we somewhat reluctantly depart from the Commission's recommendation and again reprimand Scheetz. Scheetz is admonished that, as to subsequent or other pending disciplinary investigations, he shall give his full cooperation to those entities charged with enforcement of our rules of professional responsibility. All costs are assessed against Scheetz.

No. 96-389. PREFERRED RISK GROUP v. ST. PAUL FIRE & MARINE INS. CO.

Appeal from the Iowa District Court for Dubuque County, Lawrence H. Fautsch, Judge. **REVERSED AND REMANDED.** Considered by Harris, P.J., Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Per curiam.

(6 pages $2.40)

Clarke College sustained a property loss during the construction of a sports facility. Its insurer, Preferred Risk, indemnified the college according to its policy. Preferred Risk then brought an action seeking contribution from St. Paul Fire and Marine Insurance Company (St. Paul) and Travelers Insurance Company

No. 96-389. PREFERRED RISK GROUP v. ST. PAUL FIRE & MARINE INS. CO. (continued)

(Travelers) based on their obligations as insurers of the general contractor and a subcontractor on the project. The district court denied St. Paul and Travelers' motions to dismiss, and they have appealed. **OPINION HOLDS:** I. Preferred Risk's petition fails to state a claim against either St. Paul or Travelers on which any relief can be granted. The basis for a contribution claim is the common liability of two or more actors to an injured party for the same damages, although not necessarily on the same legal theory. Preferred Risk's petition does not allege that St. Paul or Travelers insured Clarke College against any type of loss either as a named insured or additional insured. The district court order is reversed, and the case is remanded for entry of an order granting the motions to dismiss. II. Pursuant to the rules of civil procedure, a ruling sustaining a motion to dismiss is not immediately final, and a party aggrieved by such a ruling is allowed seven days to amend the petition to overcome the legal deficiencies found to exist. In the present case, this time shall run from the date of the district court's order complying with our mandate following remand.

No. 96-785. TAUSZ v. CLARION-GOLDFIELD COMMUNITY SCH. DIST.

Appeal from the Iowa District Court for Humboldt County, Allan L. Goode, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (9 pages $3.60)

James Tausz and Tausz Financial Corporation appeal from an adverse judgment following jury trial in this defamation action against the Clarion-Goldfield Community School District. They argue the district court erred in denying their pretrial discovery motion seeking access to a transcript or tape recording of a closed session of the school district's board of directors in which the allegedly defamatory statements were prepared for public release. The district court denied plaintiffs' request to review the tape and transcript of this closed session based on attorney-client privilege. **OPINION HOLDS:** I. We agree with the district court that the sealing of the record of a closed session pursuant to Iowa Code section 21.5(4) (1995) only serves to deny access to inspection by members of the general public. A special need for relevant evidence by a litigant seeking discovery may be accommodated by court-ordered disclosure to that party of relevant portions of the otherwise confidential record. II. We recognize an attorney-client privilege exists with respect to some communications between public agencies or officials and their lawyers. The privilege must be carefully circumscribed to prevent an abuse of utilizing closed sessions when public sessions are required by statute. The determination of whether the privilege exists must be made on a case-by-case basis. III. Having reviewed the transcript of the closed session *in camera,* we conclude that most of the discussions involved legal advice concerning pending litigation against the school district and were therefore privileged. IV. This may not be true as to the discussions among board members concerning the proposed resolution. However, we are unable to conclude based upon the record before us that the denial of plaintiffs' motion to disclose the

No. 96-785. TAUSZ v. CLARION-GOLDFIELD COMMUNITY SCH. DIST. (continued)

contents of the closed meeting was sufficiently prejudicial to warrant reversal. The denial of access to the record of the closed session did not prevent plaintiffs from inquiring directly of the board members concerning the challenged resolution. We affirm the district court's judgment.

No. 96-774. STATE v. WILLARD.

Appeal from the Iowa District Court for Guthrie County, Peter A. Keller, Judge. **AFFIRMED IN PART; REVERSED IN PART; AND REMANDED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Larson, J. (5 pages $ 2.00)

Charles Willard was convicted of setting fire to All Saints Catholic Church in Stuart, Iowa. The sole issue on appeal is whether the district court erred in sentencing Willard to two consecutive twenty-five-year prison terms for the same act—one for first-degree arson and one for second-degree arson as a hate crime. Willard appeals and argues the latter is included in the first-degree arson offense and is not subject to additional punishment. **OPINION HOLDS:** The statutory scheme of Iowa Code sections 712.2 and 712.3 (1995) clearly shows first-degree and second-degree arson are mutually exclusive offenses. Therefore, Willard cannot be guilty of both crimes arising out of a single act. To hold otherwise would run counter to statutory language, and thwart principles of reasonableness by doubling the sentence for first-degree arson. We affirm the first-degree arson conviction. We reverse the second-degree arson as a hate crime conviction, vacate that sentence, and remand.

No. 95-2126. STATE ex rel. MILLER v. GRODZINSKY.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Larson, J. (10 pages $ 4.00)

The State of Iowa sued two corporate officers and their employers for alleged violations of our consumer fraud statutes. All of the defendants are residents of Nevada. Individual defendants Grodzinsky and Grande moved to dismiss the suits for lack of personal jurisdiction, raising the "corporate shield" doctrine, and asserting a lack of sufficient contacts with Iowa in their own right, to create personal jurisdiction over them. The district court held that the fiduciary-shield doctrine did not apply and therefore denied the motion to dismiss. The defendants brought this interlocutory appeal. **OPINION HOLDS:** The corporate shield is inapplicable to a corporate agent who acts in such a way as to be subject to personal jurisdiction in Iowa, irrespective of the court's jurisdiction over the corporation. The allegations of defendants' personal conduct are sufficient to establish personal jurisdiction over them. Their primary participation in an alleged wrongdoing, intentionally directed at Iowa residents, made them subject to jurisdiction in Iowa. The district court properly denied the motions to dismiss.

No. 96-512. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD. v. FARMLAND MUT. INS. CO.

Appeal from the Iowa District Court for Cerro Gordo County, Ronald H. Schechtman, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Carter, and Snell, JJ. Opinion by Larson, J. (9 pages $3.60)

Gasoline contamination to the soil and groundwater occurred at the former Hancock County Cooperative (Coop) retail gasoline station in Ventura, Iowa, from two underground storage tanks. The storage tanks were leaking gasoline for at least ten years prior to their removal in 1988 and while Farmland Mutual Insurance Company's comprehensive general liability policies were in force. These insurance policies contained a standard pollution exclusion providing the insurance did not apply to pollution damage unless "such a discharge, dispersal, release or escape is sudden or accidental." The Iowa Comprehensive Underground Storage Tank Fund Board (the board) took remedial action at the contamination site and, as the Coop's assignee, made demands on Farmland for its costs. The board filed a declaratory judgment action, asking the court to interpret the "sudden and accidental" policy language. The district court granted Farmland summary judgment, determining "sudden" included a temporal aspect requiring an abrupt event. The board appeals. **OPINION HOLDS:** I. An interpretation of the word "sudden" as merely unforeseen or unexpected would be unreasonable. We agree with the district court that "sudden" is unambiguous and requires a temporal element. Summary judgment was properly granted. II. The board argues alternatively that the leakage was sudden because, at some instant in time, the first drop of gasoline escaped from a storage tank in a sudden manner. The board cites no authority for this proposition, and we believe that such an interpretation would be unreasonable. III. We reject the board's argument that the court should have considered the insurance industry "understanding" in 1970 in interpreting the sudden and accidental policy language.

No. 97-775. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. MILLER.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Larson, J. (5 pages $2.00)

The Grievance Commission has filed its findings and recommendations for sanctions in this attorney disciplinary case involving the respondent, Marcia A. Miller. Miller was employed as an attorney for Gekko International, a limited liability company. Her compensation package included membership units in Gekko. While acting as Gekko's attorney, Miller discovered that a marketing agent for Gekko might have been defrauding the company and that, perhaps, some of Gekko's principals were involved. She disclosed this information at a membership meeting over the objection of a Gekko officer and suggested that the members might have a right of rescission of their membership interests, based on fraud. Gekko immediately terminated Miller's services as attorney. Miller then contacted an attorney for Gekko and requested that he convey her demands that Gekko (1) repurchase her 60,000 units and 15,000 to 20,000 units owned by her

No. 97-775. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. MILLER. (continued)

friends at $5 each (which, the board claims, was considerably higher than the market value); and (2) dismiss a pending disciplinary charge against her. Miller also indicated that if her demands were not met by a certain date she would file a complaint with the Securities and Exchange Commission regarding her discovery of the apparent improprieties at Gekko and that she would pursue actions for sexual harassment and trade libel. **OPINION HOLDS:** Miller acted properly in pointing out the apparent fraud involving Gekko. However, her attempts to capitalize on that information and her attempt to secure the dismissal of the disciplinary charges against her violated our code of professional conduct. We order that Miller's license be suspended indefinitely with no possibility of reinstatement for sixty days following the filing of this opinion. Costs are taxed to Miller.

No. 96-422. STATE v. GRIMES.

Appeal from the Iowa District Court for Wapello County, Daniel P. Wilson, Judge. **CONVICTIONS AFFIRMED; SENTENCE FOR FIRST-DEGREE BURGLARY VACATED; REMANDED FOR RESENTENCING.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Larson, J. (6 pages $2.40)

The defendant was convicted of first-degree burglary, domestic abuse assault, and domestic abuse assault causing bodily injury. In sentencing the defendant, the court applied Iowa Code section 902.11 (1995) (minimum incarceration required for felony conviction if defendant previously convicted of forcible felony or "crime of a similar gravity"), and it considered a victim impact statement that the defendant claims was unsigned and thus invalid. **OPINION HOLDS:** I. A "crime of a similar gravity" does not include second-degree burglary. The defendant's 1987 conviction for second-degree burglary did not involve the type of victim risk contemplated by the statutory definition of a forcible felony or a crime of a similar gravity. We vacate the sentence for first-degree burglary and remand for resentencing. II. The language in section 910.5 regarding a "signed" victim impact statement is merely directory, not mandatory, and the defendant was not prejudiced by the court's consideration of the statement.

No. 96-847. IN RE CONDEMNATION OF CERTAIN LAND BY LULOFF.

Appeal from the Iowa District Court for Black Hawk County, Margaret L. Lingreen, Judge. **AFFIRMED ON APPEAL AND ON CROSS-APPEAL.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Ternus, J. (12 pages $4.80)

This is the second appeal concerning appellant Norm Luloff's attempt to condemn privately-owned land for a public road to his landlocked property. In

No. 96-847. IN RE CONDEMNATION OF CERTAIN LAND BY LULOFF. (continued)

In re Luloff, 512 N.W.2d 267 (Iowa 1994) [*Luloff I*], we affirmed the district court's order that the condemnation could proceed, but imposed a condition on remand that a deficiency in the proposed route be corrected. The deficiency concerned the fact that the "cemetery route" proposed by Luloff terminated at the corner of his property, resulting in the impossibility of Luloff gaining access without crossing property not included in the route to be condemned. Luloff filed a new condemnation application, which included an attempt to condemn a 332 foot strip of roadway, known as "Parcel E," on Brad and Karen Lichty's land. The Lichtys then filed an application for injunction and dismissal of Luloff's condemnation action. After an evidentiary hearing, the district court found Luloff had failed to comply with the required condition and permanently enjoined the condemnation. Luloff appeals and contends the trial court had no authority to consider the Lichtys' application for injunctive relief, but was limited on remand to ensuring his compliance with the condition imposed by the court in *Luloff I*. He also asserts the court "granted relief to individuals who were not proper parties," referring to Gary, Brad, and Karen Lichty. Luloff claims any injunction should have been limited to parcel E, and should not have precluded condemnation of the entire cemetery route. The Lichtys cross-appeal from the trial court's failure to award attorney fees. **OPINION HOLDS:** I. The trial court's role on remand of *Luloff I* was not limited to ensuring literal compliance with the condition we imposed on Luloff. It was clearly anticipated that Luloff's condemnation action would proceed upon remand and that the trial court would have the power to consider further proceedings. This power necessarily included the authority to determine whether any changes made to Luloff's application met statutory and constitutional requirements. II. We reject Luloff's claim the court exceeded its authority on remand in granting injunctive relief to Gary, Brad, and Karen Lichty. III. We agree with the trial court's decision to enjoin Luloff from proceeding with the present condemnation in its entirety. Luloff concedes a permanent injunction against the condemnation of parcel E is proper. Consequently, we confine our consideration of the appropriateness of injunctive relief to the cemetery route. We find Luloff's proposed road does not comply with Iowa's eminent domain statute because the cemetery route, without parcel E, does not provide the necessary access to Luloff's landlocked property. We also think the Lichtys have shown Luloff has abused the power of condemnation and used it for an oppressive purpose. We also find the equities of the case support an injunction. Luloff has had ample opportunity to successfully condemn a route across the Lichtys' property, but he chose to condemn land he did not need solely to harass the Lichtys and preserve his own property. IV. We conclude the Lichtys have failed to preserve error on their attorney fee claim.

No. 96-635. STATE ex rel. JOHNSON v. ALLEN.

Appeal from the Iowa District Court for Jasper County, J.W. Jordan and Dale B. Hagen, Judges. **AFFIRMED IN PART AND REVERSED IN PART.** Considered by McGiverin, C.J., and Harris, Lavorato, Neuman, and Ternus, JJ. Opinion by Ternus, J. (10 pages $4.00)

The City of Mingo has relied on the Jasper County sheriff's department to provide police protection for its residents. The Jasper County attorney requested the City enter into an intergovernmental agreement to pay the county for police services or hire its own law enforcement officer. When the City did neither, the county attorney brought this action for a declaratory judgment and a writ of mandamus ordering the City's mayor to hire a police chief or enter into an intergovernmental agreement. The mayor appeals from the district court's order granting the requested relief and denying his motion to dismiss. **OPINION HOLDS:** I. We conclude the county attorney had standing to file the mandamus petition. We affirm the district court's denial of the mayor's motion to dismiss. II. The decision to provide police protection is not discretionary with the City; police protection is one of the basic municipal services the City must provide to its residents to justify its existence under Iowa Code chapter 368 (1995). It is the City's duty to provide its residents with police protection. III. We conclude only the city council can enter into an intergovernmental agreement with another governmental entity to obtain police protection or make the decision to hire a law enforcement officer. Once the mayor is authorized by the council to appoint the police chief, the mayor has the obligation to do so. Until the city council is compelled to make the initial decision on how to provide police services, however, it is premature to order the mayor to fulfill a duty that has not yet been triggered. We therefore reverse but emphasize that our denial of the writ is due to the mayor's lack of responsibility to provide police protection. The City, however, does have such a responsibility.

No. 96-1426. STATE v. KNOWLES.

Appeal from the Iowa District Court for Jasper County, Thomas W. Mott and Dale B. Hagen, Judges. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Per curiam. (3 pages $1.20)

Defendant appeals his conviction for possession of drug paraphernalia. He challenges rulings allowing into evidence a marijuana pipe obtained by a search incident to the issuance of a traffic citation. Defendant contends: (1) there was no probable cause to search; (2) the statutory grant of authority to search based on the issuance of a traffic citation is invalid; and (3) it was unreasonable to detain him after issuing the citation. **OPINION HOLDS:** We need not consider defendant's first contention because the State does not contend there was probable cause to search. As to defendant's second contention, we have consistently interpreted Iowa Code section 805.1(4) (1995) as providing authority to search when a traffic violation has occurred that would constitute grounds for an arrest. In *State v. Doran*, 563 N.W.2d 620 (Iowa 1997), we upheld this statutory grant of authority in the face of challenges based on the Fourth Amendment and Article I, Section 8 of the Iowa Constitution. We decline the invitation to reconsider *Doran*. Defendant's final argument is without merit because the further detention was for purposes of making the search, which we have found to be lawful.

No. 96-799. BURNHAM v. CITY OF WEST DES MOINES.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **AFFIRMED.** Considered by Harris, P.J., and Carter, Andreasen, and Ternus, JJ., and Schultz, S.J. Opinion by Ternus, J. Special concurrence by Carter, J. (9 pages $3.60)

Appellant Clifton Burnham appealed a condemnation award to the district court, but failed to serve the sheriff with notice of the appeal. The City filed a motion to dismiss, alleging Burnham's failure to serve the sheriff deprived the court of jurisdiction to hear his appeal. Burnham resisted, claiming (1) he was not required to serve the sheriff to invoke the jurisdiction of the court, and (2) the notice of award mailed to him by the sheriff was defective. Construing Iowa Code section 6B.18 (1995) as requiring service on the sheriff to perfect an appeal, the district court granted the motion to dismiss. Burnham appealed. **OPINION HOLDS:** I. We have consistently required substantial compliance with the statutory procedure for condemnation appeals to confer jurisdiction on the district court. We hold Burnham failed to substantially comply with the statutory requirement that the sheriff be given notice of the appeal. II. We conclude the sheriff's notice of the condemnation award was not defective and substantially complied with the requirements of section 6B.18. The district court correctly dismissed Burnham's petition. **SPECIAL CONCURRENCE ASSERTS:** I concur but write separately to express my view that a failure to serve a notice of appeal on *lienholders* does not deprive the court of jurisdiction unless the lienholder can show prejudice.

No. 96-61. SIEG CO. v. KELLY.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Jr., Judge. **AFFIRMED.** Considered by Larson, P.J., and Carter, Snell, Andreasen, and Ternus, JJ. Opinion by Ternus, J. (27 pages $10.80)

Minority shareholders of Sieg-Fort Dodge Company dissented to the 1994 merger of Sieg-Fort Dodge into its parent company Sieg Company (hereinafter "Sieg"). Until the late 1980s both Sieg and Sieg-Fort Dodge had been profitable and the dissenting shareholders claimed that Sieg-Fort Dodge's subsequent depreciation in value was inequitably caused by Sieg management. The dissenters rejected Sieg's purchase price of $22.60 per share. The companies were merged and subsequently sold for a premium. Sieg filed this appraisal action under Iowa Code chapter 490 (1993). The district court established the fair value of the dissenting shareholders stock to be $62.67 per share and denied their request for an award of attorney fees. The shareholders appealed. **OPINION HOLDS:** I. Substantial evidence supports the trial court's valuation of the stock. Under Iowa Code section 490.1330, the court correctly valued the stock on a date *immediately* before the merger rather than at a date prior to the post-1989 management. The court properly considered the post-1989 stock depreciation which could not be excluded under the statute because it did not occur in anticipation of the merger. Claims for premerger mismanagement and breach of fiduciary duty are inappropriate in an appraisal action and must be brought as a separate action. II. The trial court did not err in failing to consider the postmerger sale of Sieg for which it was paid a premium. The price paid was attributable to the franchise value of the *merged* Sieg companies and did not establish that Sieg-Fort Dodge, appraised independently, had a proportionate

No. 96-61. SIEG CO. v. KELLY. (continued)

franchise value. III. For an award of attorney fees under section 490.1331(2)(b) these dissenting shareholders had to prove Sieg had no factual or legal basis for its fair-value determination or acted for a purpose other than to honestly pay the dissenters the fair value of their shares, including acting with an intent to defraud or to harass the dissenters. There is substantial evidence to support a finding Sieg had a factual and legal basis for its fair-value determination, and made a good faith effort to honestly assess the fair value of the dissenters' shares. Even if Sieg should have increased its offer in light of subsequent developments, there was no abuse of discretion in the court's refusal to award attorney fees because there is nothing to show that there would have been fruitful negotiations between the parties.

No. 96-1627. IN RE D.C.V.

Appeal from the Iowa District Court for Polk County, Karla J. Fultz, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Lavorato, and Snell, JJ. Opinion by Lavorato, J. (19 pages $7.20)

The juvenile court ordered the immediate placement of two juveniles in group foster care. The Iowa Department of Human Services (department) appeals. It contends the juvenile court improperly allowed testimony from a department official regarding budgeting decisions that are within the discretion of the department, the governor, and the legislature. The department also contends the juvenile court erred in overriding the fiscal constraints of the local regional group foster care plan when it ordered the placements rather than ordering the implementation of a new plan. **OPINION HOLDS:** I. The separation-of-powers issue is moot because the department allowed a lesser-ranking official to testify instead of its director. We note that some questions asked of that official about the department's appropriations requests may have invaded the realm of legislative immunity. We conclude, however, that the court did not rely on the challenged testimony in reaching its decision to order the immediate placement of the juveniles in group foster care and its admission was not prejudicial to the department. II. The juvenile court did not err in ordering the immediate placement of the juveniles without ordering the implementation of a new plan. Iowa Code section 232.143 (1993) directs the department and juvenile court to establish a plan for containing the number of children placed in foster care. Imposing the mandates of section 232.143 upon the juvenile court violates the separation-of-powers principle found in the Iowa Constitution. III. The mandates are also an unlawful delegation of legislative authority to the juvenile court and to the department, because they lack the guidelines necessary to prevent arbitrary and capricious decisions about individual placements in group foster care. IV. Because there was money available to accommodate the placements, the juvenile court was well within its discretion in ordering them.

IOWA ADMINISTRATIVE BULLETIN
Iowa State Printing Division
Grimes State Office Building
Des Moines, Iowa 50319

FROM
STATE OF IOWA
DEPARTMENT OF GENERAL SERVICES
CUSTOMER SERVICE CENTER
HOOVER STATE OFFICE BLDG — A LEVEL
Des Moines, IA 50319-0158

STATE LAW LIBRARY 9CR 3S 3B
CAPITOL
LOCAL