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State House DES MOINES, IOWA

ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXI
December 16, 1998NUMBER 13
Pages 1121 to 1228

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PREFACE

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

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

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

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

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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, 1998, to June 30, 1999	\$244.10 plus \$12.21 sales tax
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Third quarter	January 1, 1999, to June 30, 1999	\$125.00 plus \$6.25 sales tax
Fourth quarter	April 1, 1999, to June 30, 1999	\$ 65.00 plus \$3.25 sales tax

Single copies may be purchased for \$19.00 plus \$0.95 tax. Back issues may be purchased if the issues are available.

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

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(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 \$10.90 plus \$0.55 tax.)

Iowa Administrative Code Supplement - \$393.50 plus \$19.68 sales tax

(Subscription expires June 30, 1999)

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

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

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Dec. 25 '98	Jan. 13 '99	Feb. 2 '99	Feb. 17 '99	Feb. 19 '99	Mar. 10 '99	Apr. 14 '99	July 12 '99
Jan. 8	Jan. 27	Feb. 16	Mar. 3	Mar. 5	Mar. 24	Apr. 28	July 26
Jan. 22	Feb. 10	Mar. 2	Mar. 17	Mar. 19	Apr. 7	May 12	Aug. 9
Feb. 5	Feb. 24	Mar. 16	Mar. 31	Apr. 2	Apr. 21	May 26	Aug. 23
Feb. 19	Mar. 10	Mar. 30	Apr. 14	Apr. 16	May 5	June 9	Sept. 6
Mar. 5	Mar. 24	Apr. 13	Apr. 28	Apr. 30	May 19	June 23	Sept. 20
Mar. 19	Apr. 7	Apr. 27	May 12	May 14	June 2	July 7	Oct. 4
Apr. 2	Apr. 21	May 11	May 26	May 28	June 16	July 21	Oct. 18
Apr. 16	May 5	May 25	June 9	June 11	June 30	Aug. 4	Nov. 1
Apr. 30	May 19	June 8	June 23	June 25	July 14	Aug. 18	Nov. 15
May 14	June 2	June 22	July 7	July 9	July 28	Sept. 1	Nov. 29
May 28	June 16	July 6	July 21	July 23	Aug. 11	Sept. 15	Dec. 13
June 11	June 30	July 20	Aug. 4	Aug. 6	Aug. 25	Sept. 29	Dec. 27
June 25	July 14	Aug. 3	Aug. 18	Aug. 20	Sept. 8	Oct. 13	Jan. 10 '00
July 9	July 28	Aug. 17	Sept. 1	Sept. 3	Sept. 22	Oct. 27	Jan. 24 '00
July 23	Aug. 11	Aug. 31	Sept. 15	Sept. 17	Oct. 6	Nov. 10	Feb. 7 '00
Aug. 6	Aug. 25	Sept. 14	Sept. 29	Oct. 1	Oct. 20	Nov. 24	Feb. 21 '00
Aug. 20	Sept. 8	Sept. 28	Oct. 13	Oct. 15	Nov. 3	Dec. 8	Mar. 6 '00
Sept. 3	Sept. 22	Oct. 12	Oct. 27	Oct. 29	Nov. 17	Dec. 22	Mar. 20 '00
Sept. 17	Oct. 6	Oct. 26	Nov. 10	Nov. 12	Dec. 1	Jan. 5 '99	Apr. 3 '00
Oct. 1	Oct. 20	Nov. 9	Nov. 24	Nov. 26	Dec. 15	Jan. 19 '99	Apr. 17 '00
Oct. 15	Nov. 3	Nov. 23	Dec. 8	Dec. 10	Dec. 29	Feb. 2 '99	May 1 '00
Oct. 29	Nov. 17	Dec. 7	Dec. 22	Dec. 24	Jan. 12 '99	Feb. 16 '99	May 15 '00
Nov. 12	Dec. 1	Dec. 21	Jan. 5 '00	Jan. 7 '00	Jan. 26 '00	Mar. 1 '00	May 29 '00
Nov. 26	Dec. 15	Jan. 4 '00	Jan. 19 '00	Jan. 21 '00	Feb. 9 '00	Mar. 15 '00	June 12 '00
Dec. 10	Dec. 29	Jan. 18 '00	Feb. 2 '00	Feb. 4 '00	Feb. 23 '00	Mar. 29 '00	June 26 '00
Dec. 24	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7 '00	Jan. 26 '00	Feb. 15 '00	Mar. 1 '00	Mar. 3 '00	Mar. 22 '00	Apr. 26 '00	July 24 '00

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
15	Friday, December 25, 1998	January 13, 1999
16	Friday, January 8, 1999	January 27, 1999
17	Friday, January 22, 1999	February 10, 1999

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 Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 4th Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us

kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

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

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

To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CORRECTIONS DEPARTMENT[201]		
Institutions administration— incarceration fees, 20.10 IAB 12/2/98 ARC 8537A	Conference Room 420 Keo Way Des Moines, Iowa	December 22, 1998 9 to 11 a.m.
DENTAL EXAMINERS BOARD[650]		
Public records—college student aid noncompliance, 6.9(2)“i” IAB 12/2/98 ARC 8520A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Des Moines, Iowa	December 23, 1998 1 p.m.
Applications—college student aid noncompliance, 11.9, 11.10 IAB 12/2/98 ARC 8521A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Des Moines, Iowa	December 23, 1998 1 p.m.
Discipline—college student aid noncompliance, 30.4 IAB 12/2/98 ARC 8522A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Des Moines, Iowa	December 23, 1998 1 p.m.
Student loan default/noncompliance with agreement for payment of obligation, ch 34 IAB 12/2/98 ARC 8523A	Conference Room—2nd Floor Executive Hills West 1209 E. Court Des Moines, Iowa	December 23, 1998 1 p.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Workforce development accountability system, ch 4 IAB 12/16/98 ARC 8553A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 6, 1999 2 p.m.
Community development block grant program, 23.2, 23.4(8), 23.7(1) IAB 12/16/98 ARC 8554A	Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	January 5, 1999 2 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Social sciences endorsement, 14.21(18)“k” IAB 12/16/98 ARC 8575A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	January 14, 1999 3 p.m.
Coaching authorization, 19.1(5), 19.2, 19.5 IAB 12/16/98 ARC 8576A	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	January 14, 1999 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Home- and community-based services waiver program, 77.30, 77.33, 77.34, 77.37(21), 77.39, 78.13(10), 78.34, 78.37(15), 78.38(8), 78.41, 78.43, 79.1(2), 83.2(2), 83.3, 83.22(2), 83.42(2), 83.61, 83.82(1), 83.87(4) IAB 12/16/98 ARC 8544A	Conference Room—6th Floor Iowa Bldg., Suite 600 411 Third St. S.E. Cedar Rapids, Iowa	January 8, 1999 10 a.m.
	Lower Level 417 E. Kanesville Blvd. Council Bluffs, Iowa	January 6, 1999 9 a.m.
	Conference Room 5—5th Floor Bicentennial Bldg. 428 Western Davenport, Iowa	January 7, 1999 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	January 7, 1999 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	January 6, 1999 10 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	January 6, 1999 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	January 7, 1999 9 a.m.
	Conference Room 420 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 7, 1999 10 a.m.

INSURANCE DIVISION[191]

Investment advisers and investment adviser representatives, 50.100, 50.101, 50.103 to 50.108 IAB 12/16/98 ARC 8564A	Lobby Conference Room 330 E. Maple St. Des Moines, Iowa	January 14, 1999 10 a.m.
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LABOR SERVICES DIVISION[875]

Inspection activities; abatement verification; responses to emergencies; worker right to know, 3.1, 3.4(2), 3.5, 3.7, 3.11, 3.12 to 3.24; rescind ch 120 IAB 12/16/98 ARC 8565A	1000 E. Grand Ave. Des Moines, Iowa	January 11, 1999 9 a.m. (if requested)
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NATURAL RESOURCE COMMISSION[571]

Free lifetime fishing licenses for persons with severe physical or mental disabilities, 15.7(1), 15.8 to 15.12 IAB 12/2/98 ARC 8528A	Conference Room—4th Floor West Wallace State Office Bldg. Des Moines, Iowa	December 23, 1998 10 a.m.
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Meandered streams—motor vehicle use, 49.5 IAB 12/2/98 ARC 8527A	Conference Room—4th Floor East Wallace State Office Bldg. Des Moines, Iowa	January 21, 1999 10 a.m.
Nonresident deer hunting, 94.1, 94.6, 94.8 IAB 12/2/98 ARC 8530A	Conference Room—4th Floor Wallace State Office Bldg. Des Moines, Iowa	January 14, 1999 1 p.m.

PERSONNEL DEPARTMENT[581]

IPERS, 21.4, 21.5, 21.6, 21.8, 21.9(1), 21.10 to 21.14, 21.16, 21.18(4), 21.19, 21.24, 21.30 IAB 12/16/98 ARC 8562A (See also ARC 8563A herein)	600 E. Court Ave. Des Moines, Iowa	January 5, 1999 9 a.m.
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PETROLEUM UST FUND BOARD, IOWA COMPREHENSIVE[591]

Remedial or insurance claims, 11.1(3), 11.4 IAB 12/16/98 ARC 8557A	Conference Room 1000 Illinois St., Suite B Des Moines, Iowa	January 5, 1999 10 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

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Optometry examiners, 180.4, 180.5, 180.12(5) IAB 12/2/98 ARC 8524A	Conference Room—3rd Floor Side Two Lucas State Office Bldg. Des Moines, Iowa	December 22, 1998 1 to 3 p.m.

RACING AND GAMING COMMISSION[491]

General, 5.7(1), 5.15, 5.16, 10.2(6), 20.15(1), 21.10(12), 21.13(4), 25.20(9) IAB 12/16/98 ARC 8555A	Suite B 717 E. Court Ave. Des Moines, Iowa	January 5, 1999 9 a.m.
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REVENUE AND FINANCE DEPARTMENT[701]

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40.38
IAB 12/2/98 ARC 8535A

Conference Room—4th Floor
Hoover State Office Bldg.
Des Moines, Iowa

January 5, 1999
9 a.m.

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Unemployment insurance services;
claims and benefits,
rescind 345—ch 1; adopt
871—ch 21; amend 22.1(2),
23.10(2), 23.52(6), 23.54, 23.70,
24.1, 24.4(1), 24.8(2), 24.23(24),
24.26, 24.39(1), 24.58(6), 25.12
IAB 12/16/98 ARC 8571A

1000 E. Grand Ave.
Des Moines, Iowa

January 5, 1999
9:30 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:

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VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

NOTICE - AVAILABILITY OF PUBLIC FUNDS

Agency	Program	Service Delivery Area	Eligible Applicants	Services	Application Due Date	Contract Period
Public Health	Bureau of Health Promotion	City or County	Non-profit or governmental organizations with a history of or current involvement in collaborative health promotion, prevention and intervention activities.	Community-based collaborative endeavor directed at 1) the prevention of tobacco use by youth and /or 2) reducing exposure to environmental tobacco smoke within the service area.	January 11, 1999	February 1, 1999, through May 31, 1999.

Application forms may be obtained by contacting:
 Sally Kuhn
 Bureau of Health Promotion
 Iowa Department of Public Health
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 (515) 281-3616
 skuhn@idph.state.ia.us

Note: These grants of up to \$2,500.00 to fund grants in Iowa counties are subject to availability of Center's for Disease Control and Prevention funds approved from the Office on Smoking and Health, Initiatives to Mobilize for the Prevention and Control of Tobacco-Use (IMPACT), National Tobacco Prevention and Control Program.

NOTICE - AVAILABILITY OF PUBLIC FUNDS

AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	SERVICES	APPLICATION DUE DATE	CONTRACT PERIOD
Public Health	PRIMECARRE Community Grant Program	Statewide	Communities of 10,000 population or less.	Healthcare Provider Recruitment & Retention Efforts	January 14, 1999	January 30, 1999 through June 30, 1999

Faxed requests will be accepted.
Request application packet from:

Margaret A. Pitiris, MS
 PRIMECARRE Program Coordinator
 Program Planner III
 Center for Rural Health & Primary Care
 Division of Family and Community Health
 Iowa Department of Public Health
 Lucas State Office Building
 Des Moines, Iowa 50319-0075
 Telephone: (515) 281-5069
 FAX: (515) 242-6384

NOTICE - AVAILABILITY OF PUBLIC FUNDS

<u>Agency</u>	<u>Program</u>	<u>Service Delivery Area</u>	<u>Eligible Applicants</u>	<u>Services</u>	<u>Application Due Date</u>	<u>Contract Period</u>
Public Health	Comprehensive Substance Abuse Prevention	Statewide	Nonprofit and governmental entities with 2 years experience in providing substance abuse prevention or related service.	Comprehensive Substance Abuse Prevention Services	Letter of Intent: 2/11/99 Application: 3/10/99	Contract Period: 7/1/99 to 6/30/2000 Project Period: 7/1/99 to 6/30/2002 (3 Year)

In writing, request application packet from:

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

Note: Voluntary training is to be offered on .
 January 20, 1999. Information on time
 and locations is included in the application
 packet.

ARC 8553A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt Chapter 4, "Workforce Development Accountability System," Iowa Administrative Code.

The proposed new chapter includes a description of the information the Department is required by Iowa Code section 84A.5 to submit to the Department of Workforce Development for inclusion in its accountability system. In order to meet this statutory reporting requirement, the Department must compile information concerning individuals trained. The Department has determined that the most effective way to access information about wages earned by individuals trained, project identifier codes, and other information needed to evaluate the effectiveness of training is through the use of social security numbers. The proposed new chapter provides for the development, in conjunction with community colleges, of a mechanism and timetable for compiling information on individuals trained.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on January 6, 1999. Interested persons may submit written or oral comments by contacting Mary Lawyer, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4769.

A public hearing to receive comments about the proposed new chapter will be held on January 6, 1999, at 2 p.m. at the above address in the IDED main conference room. Individuals interested in providing comments at the hearing should contact Mary Lawyer by 4 p.m. on January 5, 1999, to be placed on the hearing agenda.

These rules are intended to implement Iowa Code section 84A.5.

The following new chapter is proposed.

CHAPTER 4 WORKFORCE DEVELOPMENT ACCOUNTABILITY SYSTEM

261—4.1(15) Purpose. The department of economic development, in conjunction with the department of education, has the responsibility under Iowa Code section 84A.5 to report information concerning the use of any state or federal training or retraining funds which are part of the workforce development system. The information reported shall be in a form that will permit the accountability system, which is a part of the workforce development system, to evaluate all of the following:

4.1(1) The impact of services on wages earned by individuals.

4.1(2) The effectiveness of training service providers in raising the skills of the Iowa workforce.

4.1(3) The impact of placement and training services on Iowa's families, communities and economy.

261—4.2(15) Compilation of information. The department of economic development, in conjunction with the community colleges, shall develop a mechanism and timetable for compiling relevant information which shall include the social security numbers of individuals trained, in order to access wages earned by those individuals, project identifier codes, and information needed to evaluate the effectiveness of training in raising the skills of trainees.

These rules are intended to implement Iowa Code section 84A.5.

ARC 8554A

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 23, "Iowa Community Development Block Grant Program," Iowa Administrative Code.

The proposed amendments (1) provide for the reallocation of CDBG funds recaptured from the former quality jobs program, which is no longer in operation, and (2) clarify the required amount of the average starting wage for jobs created or retained by projects assisted through the economic development set-aside program.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on January 5, 1999. Interested persons may submit written or oral comments by contacting Monica Fischer, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4797.

A public hearing to receive comments about the proposed amendments will be held on January 5, 1999, at 2 p.m. at the above address in the IDED Main Conference Room. Individuals interested in providing comments at the hearing should contact Monica Fischer by 4:30 p.m. on January 4, 1999, to be placed on the hearing agenda.

These amendments are intended to implement Iowa Code section 15.108(1)"a."

The following amendments are proposed.

ITEM 1. Amend rule **261—23.2(15)** by adopting the following new definition in alphabetical order:

"Quality jobs program" means a job training program formerly funded with CDBG funds that is no longer operational.

ITEM 2. Amend subrule 23.4(8) as follows:

23.4(8) Recaptured funds. Recaptured funds *from all programs except the former quality jobs program* shall be returned to the competitive program for use through the water and sewer fund and community facilities and services fund according to the percentages set forth in subrule 23.4(6).

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

Funds recaptured from the former quality jobs program shall revert to the job creation, retention and enhancement fund. Recaptured funds shall be committed to open contracts. Preference for reimbursement shall be given to those contracts funded in prior years, with priority given to those from the earliest year not yet closed out. Reimbursement will then proceed on a first-in, first-out basis.

ITEM 3. Amend subrule 23.7(1), paragraph "c," as follows:

c. The average starting wage of jobs to be created or retained by a proposed project ~~must~~ *shall* meet or exceed the greater of 75 percent of the county average wage scale or \$7 an hour, unless evidence exists of a negative condition that has the potential to cause severe economic distress on the community.

ARC 8575A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2(13), the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment adds provisions for an all social sciences endorsement. This endorsement will be in addition to all the regular social sciences endorsements currently offered.

There will be a public hearing on the proposed amendment at 3 p.m. on January 14, 1999, Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or telephone (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendment through 4:30 p.m., January 15, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 14.21(18) by adopting a new paragraph "k."

k. All social sciences. 7-12. Completion of 48 semester hours in the social sciences to include 15 semester hours in both American and world history, 9 semester hours in government, 6 semester hours in sociology, 6 semester hours in psychology other than educational psychology, 6 semester hours in geography, and 6 semester hours in economics.

ARC 8576A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2(13), the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 19, "Coaching Authorization," Iowa Administrative Code.

The proposed amendments add a requirement to the existing coaching authorization for those who initially apply for this authorization, or for those who renew this authorization, to require that an applicant complete a course relating to knowledge and understanding of professional ethics and legal responsibilities of coaches, and clarify the language in this chapter by noting that the fee for a coaching authorization or for the renewal of a coaching authorization is \$50. This fee change became effective September 16, 1998.

There will be a public hearing on the proposed amendments at 1 p.m. on January 14, 1999, Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or telephone (515)281-5849 prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments through 4:30 p.m., January 15, 1999. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend rule 282—19.1(272) by adopting a new subrule as follows:

19.1(5) Beginning on or after July 1, 1999, each applicant for an initial coaching authorization shall have successfully completed one semester hour or ten contact hours in a course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

ITEM 2. Amend rule 282—19.2(272) as follows:

282—19.2(272) **Validity.** The coaching authorization shall be valid for five years, and it shall expire five years from the date of issuance. The fee for the issuance of the coaching authorization shall be ~~\$25~~ \$50.

ITEM 3. Amend rule 282—19.5(272) as follows:

282—19.5(272) **Renewal.** The authorization may be renewed upon application, ~~\$25~~ \$50 renewal fee, and verification of successful completion of five planned renewal activities/courses related to athletic coaching approved in accordance with guidelines approved by the board of educational examiners. *Beginning on or after July 1, 1999, each*

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

applicant for the renewal of a coaching authorization shall have completed one renewal activity/course relating to the knowledge and understanding of professional ethics and legal responsibilities of coaches.

ARC 8544A**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," 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 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

The following revisions are being made to the Home- and Community-Based Services waiver programs:

- All references to Purchase of Service (P.O.S.) are being removed. The Department is no longer purchasing waiver services under a P.O.S. contract. Contracts are now being developed only for local purchase of services on behalf of counties.

- Guardians are added to the list of people who may not provide consumer-directed attendant care for consistency with the waiver approval from the Health Care Financing Administration.

- Hypodermoclysis feedings are removed from the list of nursing services which may be provided.

- Policy governing consumer-directed attendant care services is revised to clarify that assistance while the consumer is on the job site and the actual cost of transportation are not covered services; that a copy of the Consumer-Directed Attendant Care Agreement shall be attached to the service plan and kept in the record; that the claim form must be signed by the guardian if there is a guardian; that the frequency or intensity of services shall be indicated in the service plan; that consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver service; and that consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

- The limit of 16 weeks of service for the supported employment service of instructional activities on the job is removed for the HCBS MR and brain injury waiver services. The limit of 40 units per week for the MR waiver and 5 units per week for the brain injury waiver remains.

- Policy is revised for the HCBS brain injury waiver to define qualified brain injury professionals and to allow them to provide family counseling and training and to train and supervise staff who implement the plan of behavioral programming. A qualified brain injury professional shall be one of the following who meets the educational and licensure or certification requirements for the profession as required in the state of Iowa and who has two years' experience working

with people living with a brain injury: a psychologist; psychiatrist; physician; registered nurse; certified teacher; social worker; mental health counselor; physical, occupational, recreational, or speech therapist; or a person with a bachelor of arts or science degree in psychology, sociology, or public health.

- Policy is revised for the HCBS ill and handicapped waiver to require the social worker to establish an interdisciplinary team for the consumer and to complete a service plan prior to services provision and annually thereafter.

- The waiver process for allowing persons to request the Division of Medical Services to grant an exception to exceed the monthly cost limit for the level of care is being eliminated as this is duplicative of the exception to policy process already built into the Department's rules at rule 441—1.8(217).

- Policy is amended to clarify that the upper limit for costs of services for all waivers is calculated using the costs for the waiver services only, not all Medicaid expenditures.

- Policy is clarified to provide that if services are not initiated within 180 days of the written notice to the applicant, the slot reverts for use by the next applicant on the waiting list, if applicable.

- Policy is revised for the HCBS MR waiver to require that consumers receive one unit of the required services per quarter, rather than per month.

- Policy is revised for the HCBS brain injury waiver to provide that consumers may receive any waiver service each quarter to qualify for the waiver rather than requiring the consumers to receive specific services.

- Time lines are added for the HCBS MR waiver for determining when a diagnosis of mental retardation needs to be updated.

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 January 6, 1999.

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

Cedar Rapids - January 8, 1999 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 - January 6, 1999 9 a.m.
Lower Level
Council Bluffs Regional Office
417 E. Kaneshville Boulevard
Council Bluffs, Iowa 51501

Davenport - January 7, 1999 10 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor
Conference Room 5
428 Western
Davenport, Iowa 52801

Des Moines - January 7, 1999 10 a.m.
Des Moines Regional Office
City View Plaza
Conference Room 104
1200 University
Des Moines, Iowa 50314

HUMAN SERVICES DEPARTMENT[441](cont'd)

Mason City - January 6, 1999 10 a.m.
 Mason City Area Office
 Mohawk Square, Liberty Room
 22 North Georgia Avenue
 Mason City, Iowa 50401

Ottumwa - January 6, 1999 10 a.m.
 Ottumwa Area Office
 Conference Room 3
 120 East Main
 Ottumwa, Iowa 52501

Sioux City - January 7, 1999 9 a.m.
 Sioux City Regional Office
 Fifth Floor
 520 Nebraska St.
 Sioux City, Iowa 51101

Waterloo - January 7, 1999 10 a.m.
 Waterloo Regional Office
 Pinecrest Office Building
 Conference Room 420
 1407 Independence Avenue
 Waterloo, Iowa 50703

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

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

The following amendments are proposed.

ITEM 1. Amend rule 441—77.30(249A) as follows:

Amend subrule 77.30(3), paragraph "b," by rescinding and reserving subparagraph (3).

Amend subrule 77.30(7), paragraph "a," subparagraph (3), as follows:

(3) Not the spouse *or guardian* of the consumer or a parent, ~~or stepparent~~, *or guardian* of a consumer aged 17 or under.

ITEM 2. Amend rule 441—77.33(249A) as follows:

Amend subrule 77.33(1), paragraph "b," by rescinding and reserving subparagraph (3).

Amend subrule 77.33(11) by rescinding and reserving paragraph "d."

Amend subrule 77.33(15), paragraph "a," subparagraph (3), as follows:

(3) Not the spouse *or guardian* of the consumer ~~or a parent or stepparent of a consumer aged 17 or under~~.

ITEM 3. Amend rule 441—77.34(249A) as follows:

Amend subrule 77.34(7), paragraph "b," by rescinding and reserving subparagraph (3).

Amend subrule 77.34(8), paragraph "a," subparagraph (3), as follows:

(3) Not the spouse *or guardian* of the consumer or a parent, ~~or stepparent~~, *or guardian* of a consumer aged 17 or under.

ITEM 4. Amend subrule 77.37(21), paragraph "a," subparagraph (3), as follows:

(3) Not the spouse *or guardian* of the consumer or a parent, ~~or stepparent~~, *or guardian* of a consumer aged 17 or under.

ITEM 5. Amend rule 441—77.39(249A) as follows:

Amend subrule 77.39(21), introductory paragraph, as follows:

77.39(21) Family counseling and training providers. Family counseling and training providers shall be *one of the following*:

Further amend subrule 77.39(21) by adopting the following new paragraph "d."

d. Providers which are qualified brain injury professionals. A qualified brain injury professional shall be one of the following who meets the educational and licensure or certification requirements for the profession as required in the state of Iowa and who has two years' experience working with people living with a brain injury: a psychologist; psychiatrist; physician; registered nurse; certified teacher; social worker; mental health counselor; physical, occupational, recreational, or speech therapist; or a person with a bachelor of arts or science degree in psychology, sociology, or public health.

Amend subrule 77.39(23), paragraph "a," as follows:

a. Behavior assessment, and development of an appropriate intervention plan, and periodic reassessment of the plan, and training of staff who shall implement the plan must be done by a ~~psychologist or psychiatrist who is professionally trained to assess qualified brain injury professional. Formal assessment of the consumers' intellectual and behavioral functioning and evaluate their adaptive skills must be done by a licensed psychologist or a psychiatrist who is certified by the American Board of Psychiatry.~~

A *qualified brain injury professional is defined in paragraph 77.39(21) "d."*

Further amend subrule 77.39(23), paragraph "b," introductory paragraph, as follows:

b. Implementation of the plan and training and supervision of caregivers, including family members, must be done by behavioral aides who have been trained by the ~~psychologist or psychiatrist~~ *a qualified brain injury professional with the qualifications described in paragraph 77.39(23) "a," 77.39(21) "d" and who are employees of one of the following*:

Amend subrule 77.39(24), paragraph "a," subparagraph (3), as follows:

(3) Not the spouse *or guardian* of the consumer or a parent, ~~or stepparent~~, *or guardian* of a consumer aged 17 or under.

ITEM 6. Amend subrule 78.13(10), paragraph "a," as follows:

a. Payment may be made to the agency which provided transportation if the agency is certified by the department of transportation, ~~has a purchase of service contract for transportation services with the department of human services,~~ and requests direct payment by submitting Form 625-5297, Claim Order/Claim Voucher, within 90 days after the trip. *Reimbursement for transportation shall be based on a fee schedule by mile or by trip.*

ITEM 7. Amend rule 441—78.34(249A) as follows:

Amend subrule 78.34(4) as follows:

78.34(4) Nursing care services. Nursing care services are services provided by licensed agency nurses to clients in the home which are ordered by and included in the plan of treatment established by the physician. The services shall be reasonable and necessary to the treatment of an illness or injury and include: observation; evaluation; teaching; training; supervision; therapeutic exercise; bowel and bladder care; administration of medications; intravenous, ~~hypodermoclysis,~~ and enteral feedings; skin care; preparation of clinical and progress notes; coordination of services; and informing the

HUMAN SERVICES DEPARTMENT[441](cont'd)

physician and other personnel of changes in the patient's condition and needs. A unit of service is a visit.

Amend subrule 78.34(7), paragraph "a," subparagraphs (9) and (12), as follows:

(9) ~~Employment support~~ Assistance needed to go to or return from a place of employment. Assistance while the consumer is on the job site and the cost of transportation for the consumer are not included in consumer-directed attendant care services.

(12) ~~Transportation essential to the health and welfare of the consumer~~ Assisting or accompanying a consumer in using transportation essential to the health and welfare of the consumer. The cost of the transportation is not included.

Further amend subrule 78.34(7), paragraph "g," as follows:

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, ~~when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan.~~ A copy of the completed agreement shall be provided to the service worker or case manager prior to the initiation of services attached to the service plan which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's records.

Further amend subrule 78.34(7) by adopting the following new paragraphs "h," "i," "j," "k," and "l."

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

ITEM 8. Amend subrule 78.37(15) as follows:

Amend paragraph "a," subparagraphs (9) and (12), as follows:

(9) ~~Employment support~~ Assistance needed to go to or return from a place of employment. Assistance while the consumer is on the job site and the cost of transportation for the consumer are not included in consumer-directed attendant care services.

(12) ~~Transportation essential to the health and welfare of the consumer~~ Assisting or accompanying a consumer in using transportation essential to the health and welfare of the consumer. The cost of the transportation is not included.

Amend paragraph "g" as follows:

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, ~~when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan.~~ A copy of the completed agreement shall be provided to the service worker or case manager prior to the initiation of services attached to the service plan which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's records.

Adopt the following new paragraphs "h," "i," "j," "k," and "l."

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

ITEM 9. Amend subrule 78.38(8) as follows:

Amend paragraph "a," subparagraphs (9) and (12), as follows:

(9) ~~Employment support~~ Assistance needed to go to or return from a place of employment. Assistance while the consumer is on the job site and the cost of transportation for the consumer are not included in consumer-directed attendant care services.

(12) ~~Transportation essential to the health and welfare of the consumer~~ Assisting or accompanying a consumer in using transportation essential to the health and welfare of the consumer. The cost of the transportation is not included.

Amend paragraph "g" as follows:

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, ~~when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan.~~ A copy of the completed agreement shall be provided to the service worker or case manager prior to the initiation of services attached to the service plan which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's records.

Adopt the following new paragraphs "h," "i," "j," "k," and "l."

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

ITEM 10. Amend rule 441—78.41(249A) as follows:

Amend subrule 78.41(7), paragraph "h," subparagraph (2), as follows:

(2) A maximum of 40 units are available per week for 16 weeks (640 units).

Amend subrule 78.41(8), paragraph "a," subparagraphs (9) and (12), as follows:

(9) ~~Employment support~~ Assistance needed to go to or return from a place of employment. Assistance while the consumer is on the job site and the cost of transportation for

HUMAN SERVICES DEPARTMENT[441](cont'd)

the consumer are not included in consumer-directed attendant care services.

(12) ~~Transportation essential to the health and welfare of the consumer~~ *Assisting or accompanying a consumer in using transportation essential to the health and welfare of the consumer. The cost of the transportation is not included.*

Further amend subrule 78.41(8), paragraph "g," as follows:

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, ~~when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan.~~ A copy of the completed agreement shall be provided ~~to the service worker or case manager prior to the initiation of services attached to the service plan which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's records.~~

Further amend subrule 78.41(8) by adopting the following new paragraphs "h," "i," "j," "k," and "l."

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

ITEM 11. Amend rule 441—78.43(249A) as follows:

Amend subrule 78.43(4), paragraph "g," subparagraph (2), as follows:

(2) A maximum of five units per week are available ~~for a maximum of 16 weeks (80 units).~~

Amend subrule 78.43(13), paragraph "a," subparagraphs (9) and (12), as follows:

(9) ~~Employment support~~ *Assistance needed to go to or return from a place of employment. Assistance while the consumer is on the job site and the cost of transportation for the consumer are not included in consumer-directed attendant care services.*

(12) ~~Transportation essential to the health and welfare of the consumer~~ *Assisting or accompanying a consumer in using transportation essential to the health and welfare of the consumer. The cost of the transportation is not included.*

Further amend subrule 78.43(13), paragraph "g," as follows:

g. The consumer and provider shall complete and sign Form 470-3372, HCBS Consumer-Directed Attendant Care Agreement, ~~when consumer-directed attendant care is part of the consumer's case plan or individual comprehensive plan.~~ A copy of the completed agreement shall be provided ~~to the service worker or case manager prior to the initiation of services attached to the service plan which is signed by the service worker prior to the initiation of services, and kept in the consumer's and department's records.~~

Further amend subrule 78.43(13) by adopting the following new paragraphs "h," "i," "j," "k," and "l."

h. If the consumer has a guardian, the care plan shall address how consumer-directed attendant care services will be

monitored to ensure the consumer's needs are being adequately met.

i. If the consumer has a guardian, the guardian shall sign the claim form in place of the consumer, indicating that the service has been provided as presented on the claim.

j. The frequency or intensity of services shall be indicated in the service plan.

k. Consumer-directed attendant care services may not be simultaneously reimbursed with any other HCBS waiver services.

l. Consumer-directed attendant care services may be provided to a recipient of in-home health-related care services, but not at the same time.

ITEM 12. Amend subrule 79.1(2), Basis of reimbursement provider categories of "HCBS AIDS/HIV adult day care waiver service providers," "HCBS brain injury respite care—facility care—foster group care waiver service providers," "HCBS elderly adult day care and transportation waiver service providers," "HCBS ill and handicapped adult day care and respite care—out-of-home—foster group care waiver service providers," and "HCBS MR respite care—facility care—foster group care and supported employment—initial instructional activities on job waiver service providers," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
HCBS AIDS/HIV waiver service providers, including:		
7. Adult day care	Prospective reimbursement for P.O.S. providers. Fee schedule for others.	P.O.S. contract rate or veterans Veterans administration contract rate or \$20 per half day, \$40 per full day, or \$60 per extended day if no P.O.S. or veterans administration contract.
HCBS brain injury waiver service providers, including:		
2. Respite care providers, including:		
Facility care:		
Foster group care	Prospective reimbursement. See 441—185.106(234)	P.O.S. contract Rehabilitative treatment and supportive services rate

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HCBS elderly waiver service providers, including:

1. Adult day care

~~Prospective reimbursement for P.O.S. providers. Fee schedule for others.~~

~~P.O.S. contract rate or veterans Veterans administration contract rate or \$20 per half day, \$40 per full day, or \$60 per extended day if no P.O.S. veterans administration contract.~~

11. Transportation providers

Fee schedule

State per mile rate for regional transit providers, ~~or P.O.S. rate for P.O.S. providers,~~ or rate established by area agency on aging. ~~Reimbursement will be at the lowest cost service rate consistent with the consumer's needs.~~

HCBS ill and handicapped waiver service providers, including:

3. Adult day care

~~Prospective reimbursement for P.O.S. providers. Fee schedule for others.~~

~~P.O.S. contract rate or veterans Veterans administration contract rate or \$20 per half day, \$40 per full day, or \$60 per extended day if no P.O.S. or veterans administration contract.~~

4. Respite care providers, including:

Out-of-home:

Foster group care

Prospective reimbursement. See 441—185.106(234)

~~P.O.S. contract Rehabilitative treatment and supportive services rate~~

HCBS MR waiver service providers, including:

2. Respite care providers, including:

Facility care:

Foster group care

Prospective reimbursement. See 441—185.106(234)

~~P.O.S. contract Rehabilitative treatment and supportive services rate~~

3. Supported employment

b. Initial instructional activities on the job

Retrospectively limited prospective rates. See 79.1(15)

\$15.46 per hour. Maximum of 40 units per week, limit 16 weeks, 640 units

ITEM 13. Amend subrule 83.2(2), paragraph "a," as follows:

a. ~~The county social worker shall perform an assessment of the person's needs and determine the availability and appropriateness of services. The consumer shall have a service plan approved by the department which is developed by the county social worker as identified by the county of residence. This service plan must be completed prior to services provision and annually thereafter.~~

The social worker shall establish the interdisciplinary team for the consumer and, with the team, identify the consumer's need for service based on the consumer's needs and desires as well as the availability and appropriateness of services using the following criteria:

(1) This ~~assessment~~ *service plan* shall be based, in part, on information in the completed Home- and Community-Based Services Assessment or Reassessment, Form SS-1644 470-0659. Form SS-1644 470-0659 is completed annually, or more frequently upon request or when there are changes in the client's condition.

(2) ~~Case~~ *Service* plans for persons aged 20 or under shall be developed or reviewed after the child's individual education plan and EPSDT plan, if applicable, are developed so as not to replace or duplicate services covered by those plans.

(3) Those ~~case~~ *service* plans for persons aged 20 or under which include *home health*, homemaker, *nursing*, or respite services ~~beyond intermittent~~ shall not be approved until a home health agency has made a request to cover the ~~client's~~ *consumer's* service needs through EPSDT and the plan is approved (signed and dated) by the human services area administrator.

Further amend subrule 83.2(2) by rescinding paragraph "b" and adopting the following new paragraph "b" in lieu thereof:

b. The total monthly cost of the ill and handicapped waiver services shall not exceed the established aggregate monthly cost for level of care as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Skilled level of care</u>	<u>Nursing level of care</u>	<u>ICF/MR</u>
\$2,480	\$852	\$3,019

b. The total monthly cost of the elderly waiver services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

<u>Skilled level of care</u>	<u>Nursing level of care</u>
\$2,480	\$852

ITEM 14. Amend rule 441—83.3(249A) as follows:
Amend subrule 83.3(2), paragraph “b,” by adopting the following new subparagraph (3).

(3) Once a payment slot is assigned, written notice shall be given to the applicant, and the payment slot shall be held for 180 days to arrange services unless the person has been determined ineligible for the program. If services are not initiated within 180 days of the written notice to the applicant, the slot reverts for use by the next applicant on the waiting list, if applicable. The applicant must reapply for a new slot.

Amend subrule 83.3(3) by adopting the following new paragraph “e.”

e. HCBS ill and handicapped waiver services are not available in conjunction with other Medicaid services or group foster care services.

ITEM 16. Amend subrule 83.42(2) by rescinding paragraph “b” and adopting the following new paragraph “b” in lieu thereof:

b. The total monthly cost of the AIDS/HIV waiver services shall not exceed the established aggregate monthly cost for level of care. The monthly cost of AIDS/HIV waiver services cannot exceed the established limit of \$1650.

ITEM 17. Amend rule 441—83.61(249A) as follows:
Amend subrule 83.61(1) by rescinding paragraph “a” and adopting the following new paragraph “a” in lieu thereof:

a. Have a primary diagnosis of mental retardation which shall be updated based on the following time lines:

ITEM 15. Amend subrule 83.22(2) by rescinding paragraph “b” and adopting the following new paragraph “b” in lieu thereof:

Age	Initial application to HCBS MR waiver program	Recertification for persons with an IQ range of 54 or below, moderate range of MR or below	Recertification for persons with an IQ range of 55 or above, diagnosis of mild or unspecified range of MR
0 through 17 years	Psychological documentation within three years of the application date substantiating a diagnosis of mental retardation or mental disability equivalent to mental retardation	After the initial psychological evaluation which listed the consumer in this range, substantiate a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every six years and when a significant change occurs	After the initial psychological evaluation which listed the consumer in this range, substantiate a diagnosis of mental retardation or mental disability equivalent to mental retardation every three years and when a significant change occurs
18 through 21 years	<ul style="list-style-type: none"> Psychological documentation substantiating diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation within three years prior to age 18, or Diagnosis of mental retardation or mental disability equivalent to mental retardation made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation 	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every five years and whenever a significant change occurs

HUMAN SERVICES DEPARTMENT[441](cont'd)

Age	Initial application to HCBS MR waiver program	Recertification for persons with an IQ range of 54 or below, moderate range of MR or below	Recertification for persons with an IQ range of 55 or above, diagnosis of mild or unspecified range of MR
22 years and above	Diagnosis made before age 18 and current psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation, if the last testing date was (1) more than five years ago for consumers with an IQ range of 55 or above or with a diagnosis of mild mental retardation, or (2) more than ten years ago for consumers with an IQ range of 54 or below or with a diagnosis of moderate MR or below	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every ten years and whenever a significant change occurs	Psychological documentation substantiating a diagnosis of mental retardation or a diagnosis of mental disability equivalent to mental retardation every five years and whenever a significant change occurs

Further amend subrule 83.61(1) as follows:

Amend paragraph "e" as follows:

e. Have service needs that can be met by this waiver program. At a minimum, an adult must receive one unit of either consumer-directed attendant care, supported community living, respite, or supported employment service per month calendar quarter. Children shall, at a minimum, receive one unit of either consumer-directed attendant care, respite service or supported community living service per month calendar quarter under this program.

Amend subrule 83.61(2), paragraph "d," as follows:

d. Services shall not exceed the number of maximum units established for each service, except as follows:

(1) Requests to exceed unit maximums shall be granted only for the respite service unit maximum.

(2) Requests to exceed respite unit maximums require special review by the administrator of the division of medical services' designee for children and state cases, or the county board of supervisors' designee for adults and, based on a written determination, may be reduced or denied as not cost-effective.

Amend subrule 83.61(4), paragraph "a," subparagraph (4), as follows:

(4) Once assigned, written notice shall be given to the applicant, and the payment slot shall be held for the applicant for 180 days to arrange services unless the person has been determined ineligible for the program. If the slot has not been used in 180 days, it reverts to the county services are not initiated within 180 days of the date on the county department's written notice to the applicant, the slot reverts for use by the next applicant on the waiting list, if applicable. The applicant must reapply for a new slot.

Further amend subrule 83.61(4), paragraph "b," subparagraph (2), as follows:

(2) Persons who do not fall within the available slots shall have their application rejected, but their names shall be maintained on the waiting list. As slots become available, persons shall be selected from the waiting list to maintain the number of approved persons on the program based on their order on the waiting list. The county central point of coordination administrator for adults and the division of medical services for children and state cases adults with state case status shall contact the county department when a slot becomes available. The county department shall contact the applicant regarding the availability of a slot. If services are not initiated within 180 days of the date on the county de-

partment's written notice to the consumer, the slot reverts for use by the next applicant on the waiting list, if applicable.

ITEM 18. Amend subrule 83.82(1), paragraph "h," as follows:

h. At a minimum, receive case management services a waiver service each quarter, and use at least one unit of respite or supported community living services each quarter under this program.

ITEM 19. Amend subrule 83.87(4) as follows:

83.87(4) Case file. The Medicaid case manager must ensure that the consumer case file contains the consumer's ICP, the department's, or and, if the county is voluntarily participating, the county's final approval of service costs and the following completed forms:

a. Eligibility for Medicaid Waiver, Form RS-1238 470-0563.

b. Home- and Community-Based Service Report, Form SS-1645 470-0660.

c. Medicaid Home- and Community-Based Payment Agreement, Form MA-2171 470-0379.

d. Consumer Data Entry, Form 470-3280.

ARC 8543A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

This amendment revises policy governing the prioritization of persons on waiting lists for state child care assistance to reflect the exact legislative language as set forth in 1998 Iowa Acts, chapter 1218, section 12, subsection 4. This revision is being made in response to the Administrative Rules

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Review Committee. Currently there are no waiting lists for state child care assistance.

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 January 6, 1999.

This amendment is intended to implement Iowa Code section 234.6 and 1998 Iowa Acts, chapter 1218, section 12, subsection 4.

The following amendment is proposed.

Amend subrule **170.2(3)**, paragraph "a," as follows:

a. Families with an income at or below 100 percent of the federal poverty guidelines and in which the parents level whose members are employed at least 28 hours per week, or are and parents with a family income at or below 100 percent of the federal poverty level who are under the age of 21 and are participating in an educational program leading to a high school diploma or equivalent.

ARC 8560A**INSPECTIONS AND APPEALS
DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 10A.104(5), the Department of Inspections and Appeals gives Notice of Intended Action to rescind Chapter 30, "Food and Consumer Safety"; Chapter 31, "Food Establishment Inspections"; Chapter 32, "Food Service Establishment Inspections"; and Chapter 33, "Food and Beverage Vending Machine Inspections"; and adopt new Chapter 30, "Food and Consumer Safety," and Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code.

The proposed amendments implement 1998 Iowa Acts, chapter 1162 [House File 2166], which adopted the 1997 edition of the United States Food and Drug Administration's Model Food Code; repealed Iowa Code chapters 137A, 137B, and 137E, and created a new Iowa Code chapter 137F; and increased license fees for food establishments and food processing plants.

Interested persons may make written comments or suggestions on the proposed amendments on or before January 5, 1999. Written materials should be addressed to the Director, Department of Inspections and Appeals, Lucas State Office Building, East 12th and Grand Avenue, Des Moines, Iowa 50319-0083, or faxed to (515)242-6863. E-mail may be sent to rwalsh@max.state.ia.us.

These amendments are intended to implement Iowa Code section 10A.104, Iowa Code chapters 137C and 137D, and 1998 Iowa Acts, chapter 1162 [House File 2166].

The following amendments are proposed.

ITEM 1. Rescind 481—Chapters 30 and 31 and adopt the following new chapters in lieu thereof:

**CHAPTER 30
FOOD AND CONSUMER SAFETY**

481—30.1(10A) Inspections division's food and consumer safety bureau. The inspections division's food and consumer safety bureau inspects egg handlers, food establishments (retail), food processing establishments (wholesale), food and beverage vending machines, hotels, and food service operations in schools, correctional and penal institutions.

481—30.2(10A) Definitions.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home, but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Boarder" means a person who rents a room, rooms or apartment for at least a week. A boarder is considered permanent and is not a transient guest.

"Boarding house" means a house in which lodging is rented and meals are served to permanent guests. A boarding house is not a food service establishment or hotel unless it rents or caters to transient guests.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C or 137D or 1998 Iowa Acts, chapter 1162.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Department" means the department of inspections and appeals.

"Egg handler" or "handler" means any person who engages in any business in commerce which involves buying or selling any eggs (as a poultry producer or otherwise), or processing any egg products, or otherwise using any eggs in the preparation of human food. An egg handler does not include a food establishment or home food establishment if either establishment obtains eggs from a licensed egg handler or supplier which meets standards referred to in rule 481—31.2(137F). Producers who sell eggs produced exclusively from their own flocks directly to egg handlers or to consumer customers are exempt from regulation as egg handlers.

"Farmers market" means a marketplace which operates seasonally as a common market for fresh fruits and vegetables on a retail basis for consumption elsewhere.

The following products may be sold at a farmers market without being licensed under 1998 Iowa Acts, chapter 1162, section 9, at the market location:

1. Baked goods except the following: soft pies and bakery products with custard or cream fillings, as well as other potentially hazardous items. These products must be labeled in accordance with rule 481—34.3(137D).

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2. Wholesome, fresh eggs.
 3. Honey which is labeled per rule 481—34.3(137D).
 4. Prepackaged, nonhazardous food products prepared in an establishment licensed under 1998 Iowa Acts, chapter 1162, section 9, as a food establishment or a food processing establishment.
 5. Fresh fruits and vegetables.
- “Food establishment” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a food service operation in a school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school or the Iowa juvenile home. “Food establishment” does not include the following:
1. A food processing plant.
 2. An establishment that offers only prepackaged foods that are nonpotentially hazardous.
 3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
 4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
 5. Premises which operate as a farmers market.
 6. Premises of a residence in which food that is nonpotentially hazardous is sold for consumption off the premises, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. “Nonpotentially hazardous food” means only the following:
 - Baked goods, except the following: soft pies, bakery products with custard or cream fillings, or any other potentially hazardous goods.
 - Wholesome, fresh eggs that are kept at a temperature of 45 degrees Fahrenheit or 7 degrees Celsius or less.
 - Honey which is labeled with additional information as provided by departmental rule.
 7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
 8. A private home that receives catered or home-delivered food.
 9. Child day care facilities and other food establishment facilities located in hospitals or health care facilities which are subject to inspection by other state agencies or divisions of the department.
 10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
 11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
 12. Premises covered by a current Class “A” beer permit as provided in Iowa Code chapter 123.
 13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
 14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler’s license.

“Food processing plant” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include premises covered by a Class “A” beer permit as provided in Iowa Code chapter 123.

“Food service establishment” means a food establishment where food is prepared or served for individual portion ser-

vice intended for consumption on the premises or subject to Iowa sales tax as provided in Iowa Code section 422.45.

“Home food establishment” means a business on the premises of a residence where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$20,000. This term does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments. Home food establishments with annual gross sales of \$1,000 or less in sales of potentially hazardous bakery products are exempt from licensing under Iowa Code section 137D.2, if the food is labeled and the label states that the food comes from a kitchen not under state inspection or licensure and that labeling complies with rule 481—34.3(137D).

“Hotel” means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

“License holder” means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C or 137D or 1998 Iowa Acts, chapter 1162.

“Mobile food unit” means a food establishment that is readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

“Panned candies” are those with a fine hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

“Pushcart” means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures, or limited to the preparation and serving of frankfurters.

“Retail food establishment” means a food establishment that sells food or food products to consumer customers intended for preparation or consumption off the premises.

“Revoke” means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C or 137D or 1998 Iowa Acts, chapter 1162. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

“Salvage food” means food from truck wrecks, fires, tornadoes or other disasters which involve food products.

“Suspend” means to render a license issued under Iowa Code chapter 137C, 137D, or 196 or 1998 Iowa Acts, chapter 1162, invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

“Temporary food establishment” means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration.

“Transient guest” means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

“Vending machine” means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from li-

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censing, but may be inspected by the department upon receipt of a written complaint.

481—30.3(137C,137D,137F,196) Licensing. A license to operate any of the above must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; location of buildings; or other data relative to the license requested. Applications are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

30.3(1) A license is not transferable. Licenses are not refundable unless the license is surrendered to the department prior to the effective date of the license.

30.3(2) A license is renewable and expires after one year.

30.3(3) A valid license shall be posted no higher than eye level where the public can see it. Vending machines shall bear a tag to affirm the license.

30.3(4) Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license.

Nutrition sites for the elderly licensed under 1998 Iowa Acts, chapter 1162, may change locations in the same city without obtaining a new license.

30.3(5) The regulatory authority may require documentation from a license holder of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing establishment. The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

This rule is intended to implement Iowa Code sections 10A.502(2), 137C.8, and 137D.2 and 1998 Iowa Acts, chapter 1162, sections 9 to 11.

481—30.4(137C,137D,196) License fees. The license fee is the same for an initial license and a renewal license. Licenses expire one year from the date of issuance, except for temporary food establishments. Applications for licenses are available from the Department of Inspections and Appeals, Inspections Division, Lucas State Office Building, Des Moines, Iowa 50319-0083; or from a contracting local health department. License fees are set by the Iowa Code sections listed below and charged as follows:

30.4(1) Retail food establishments are based on annual gross sales of food or food products to consumer customers intended for preparation or consumption off the premises (1998 Iowa Acts, chapter 1162, section 11) as follows:

- a. For annual gross sales of less than \$10,000—\$30;
- b. For annual gross sales of \$10,000 to \$250,000—\$75;
- c. For annual gross sales of \$250,000 to \$500,000—\$115;
- d. For annual gross sales of \$500,000 to \$750,000—\$150;
- e. For annual gross sales of \$750,000 or more—\$225.

30.4(2) Food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (1998 Iowa Acts,

chapter 1162, section 11) or subject to Iowa sales tax as provided in Iowa Code section 422.45 as follows:

- a. For annual gross sales of less than \$50,000—\$50;
- b. For annual gross sales of \$50,000 to \$100,000—\$85;
- c. For annual gross sales of \$100,000 to \$250,000—\$175;
- d. For annual gross sales of \$250,000 to \$500,000—\$200;
- e. For annual gross sales of \$500,000 or more—\$225.

30.4(3) Food and beverage vending machines, \$20 for the first machine and \$5 for each additional machine (1998 Iowa Acts, chapter 1162, section 11).

30.4(4) Home food establishments, \$25 (Iowa Code section 137D.2(1)).

30.4(5) Hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 15 guest rooms—\$20;
- b. For 16 to 30 guest rooms—\$30;
- c. For 31 to 75 guest rooms—\$40;
- d. For 76 to 149 guest rooms—\$50;
- e. For 150 or more guest rooms—\$75.

30.4(6) Mobile food unit or pushcart, \$20 (1998 Iowa Acts, chapter 1162, section 11).

30.4(7) Temporary food service establishments issued for up to 14 consecutive days in conjunction with a single event or celebration, \$25 (1998 Iowa Acts, chapter 1162, section 11).

30.4(8) For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or warehouse (1998 Iowa Acts, chapter 1162, section 11) as follows:

- a. Annual gross sales of less than \$50,000—\$50;
- b. Annual gross sales of \$50,000 to \$250,000—\$100;
- c. Annual gross sales of \$250,000 to \$500,000—\$150;
- d. Annual gross sales of \$500,000 or more—\$250.

30.4(9) Egg handlers are based on the total number of cases of eggs purchased or handled during the month of April (Iowa Code section 196.3) as follows:

- a. For less than 125 cases—\$15;
- b. For 125 to 249 cases—\$35;
- c. For 250 to 999 cases—\$50;
- d. For 1,000 to 4,999 cases—\$100;
- e. For 5,000 to 9,999 cases—\$175;
- f. For 10,000 or more cases—\$250.

For the purpose of determining fees, each case shall be 30 dozen eggs.

481—30.5(137F) Penalty and delinquent fees.

30.5(1) Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month.

30.5(2) A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) A person who violates 1998 Iowa Acts, chapter 1162, or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to the assessment of any civil penalties, a hearing conducted by the appeals division in the department of inspections and appeals must be provided as required in rule 481—30.13(10A).

This rule is intended to implement 1998 Iowa Acts, chapter 1162, sections 9, 14, and 22.

481—30.6(137C,137D,137F,196) Returned checks. If a check intended to pay for any license provided for under Iowa

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Code chapters 137C, 137D, or 196 or 1998 Iowa Acts, chapter 1162, is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license.

481—30.7(137F) Double licenses.

30.7(1) Any establishment which holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license.

The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) A retail food establishment and a food service establishment which occupy the same premises must be licensed separately and the applicable fees paid. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

30.7(3) A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

30.7(4) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(5) A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

30.7(6) The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under both the definition of a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license.

This rule is intended to implement Iowa Code section 10A.502 and 1998 Iowa Acts, chapter 1162, section 11.

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) Food establishments shall be inspected at an interval specified in Section 8-401.10 of the Food Code Recommendations of the Food and Drug Administration. Food service operations in schools, summer camps, assisted living facilities, residential service substance abuse treatment facilities, halfway house substance abuse treatment facilities, correctional facilities operated by the department of corrections, the state training school, and the Iowa juvenile home shall be inspected at least once annually.

30.8(2) Food processing plants shall be inspected at least annually.

30.8(3) Hotels shall be inspected at least once biennially.

30.8(4) Home food establishments and vending machine license holders shall be inspected at least once annually.

30.8(5) Egg handlers shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 196.2 and 1998 Iowa Acts, chapter 1162, section 7.

481—30.9(137D,137F,196) Disposal standards. Standards in the 1984 edition of the "Model Food Salvage Code" are used to regulate the disposal of salvaged or distressed merchandise. A copy is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—30.10(137C,137D,137F) Local contracts. The department may contract with municipal corporations to inspect and collect license fees from any establishment covered by these rules. Inspections shall be pursuant to 481—Chapters 30, 31 and 37. A list of contracts is available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

This rule is intended to implement 1998 Iowa Acts, chapter 1162, section 8.

481—30.11(22) Examination of records. Information collected by the inspections division is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director.

481—30.12(137C,137D,137F,196) Denial, suspension or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

481—30.13(10A) Formal hearing. All decisions of the bureau may be contested by an adversely affected party. Request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

30.13(1) The proposed decision of the administrative law judge becomes final 30 days after it is mailed.

30.13(2) Any request for administrative review of a proposed decision must:

a. Be made in writing;

b. Be filed with the director of the department of inspections and appeals within 30 days after the proposed decision was mailed to the aggrieved party (date of receipt by personal service or the postmarked date is time of filing);

c. State the reason(s) for the request.

30.13(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing.

481—30.14(137D,137F,196) False label or defacement. No person shall use any label required by Iowa Code chapter 137C or 196 or 1998 Iowa Acts, chapter 1162, which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by these chapters.

This rule is intended to implement 1998 Iowa Acts, chapter 1162, section 8.

These rules are intended to implement Iowa Code sections 10A.104, 10A.502 and 22.11 and Iowa Code chapters 137C, 137D, and 196 and 1998 Iowa Acts, chapter 1162.

CHAPTER 31

FOOD ESTABLISHMENT AND FOOD PROCESSING PLANT INSPECTIONS

481—31.1(137F) Inspection standards. Standards in the 1997 edition of the Food Code Recommendations of the Food

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and Drug Administration are used to inspect all food establishments. Exceptions to the Code are as follows:

31.1(1) Subparagraph 1-201.10(B)(31) and Section 3-403.10 are deleted.

31.1(2) Food prepared in a home food establishment, licensed under Iowa Code section 137D.2 or a premises as provided in 1998 Iowa Acts, chapter 1162, section 6(8f), can be offered for sale.

31.1(3) Paragraph 3-301.11(b) is changed to read:

a. Except when washing fruits and vegetables, food employees should, to the extent practicable, avoid contact with exposed, ready-to-eat food with their bare hands. Where food is routinely handled by employees, employers should adopt reasonable sanitary procedures to reduce the risk of the transmission of pathogenic organisms.

b. In seeking to minimize employee's physical contact with ready-to-eat foods, no single method or device is universally practical or necessarily the most effective method to prevent the transmission of pathogenic organisms in all situations. As such, each public food service establishment shall review its operations to identify procedures where ready-to-eat food must be routinely handled by its employees and adopt one or more of the following sanitary alternatives, to be used alone or in combination, to prevent the transmission of pathogenic organisms:

(1) The use of suitable food handling materials including, but not limited to, deli tissues, appropriate utensils, or dispensing equipment. Such materials must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(2) The use of single-use gloves, for the purpose of preparing or handling ready-to-eat foods, shall be discarded when damaged or soiled or when the process of food preparation or handling is interrupted. Single-use gloves must be used in conjunction with thorough hand-washing practices in accord with subparagraph (3).

(3) The use, pursuant to the manufacturer's instructions, of anti-microbial soaps, with the additional optional use of anti-bacterial protective skin lotions or anti-microbial hand sanitizers, rinses or dips. All such soaps, lotions, sanitizers, rinses and dips must contain active topical anti-microbial or anti-bacterial ingredients, registered by the United States Environmental Protection Agency, cleared by the United States Food and Drug Administration, and approved by the United States Department of Agriculture.

(4) The use of such other practices, devices, or products that are found by the division to achieve a comparable level of protection to one or more of the sanitary alternatives in subparagraphs (1) through (3).

c. Regardless of the sanitary alternatives in use, each public food service establishment shall establish:

(1) Systematic focused education and training of all food service employees involved in the identified procedures regarding the potential for transmission of pathogenic organisms from contact with ready-to-eat food. The importance of proper hand washing and hygiene in preventing the transmission of illness, and the effective use of the sanitary alternatives and monitoring system utilized by the public food service establishment, shall be reinforced. The content and duration of this training shall be determined by the manager of the public food service establishment.

(2) A monitoring system used to demonstrate the proper and effective use of sanitary alternatives utilized by the public food service establishment.

31.1(4) Section 3-501.16 shall be amended by adding the following: "Shell eggs shall be received and held at an ambi-

ent temperature not to exceed forty-five degrees Fahrenheit or seven degrees Celsius."

31.1(5) Paragraph 3-502.12(A) shall be amended by adding the following: "Packaging of raw meat and raw poultry using an oxygen packaging method, with a 30-day 'sell by' date from the date it was packaged, shall be exempt from having a HACCP Plan that contains the information required in this section and Section 8-201.14."

31.1(6) Section 3-603.11 shall be amended by adding the following: "The following standardized language shall be used on the required consumer advisory: 'Thoroughly cooking foods of animal origin such as beef, eggs, fish, lamb, pork, poultry, or shellfish reduces the risk of food-borne illness. Individuals with certain health conditions may be at higher risk if these foods are consumed raw or undercooked. Consult your physician or public health official for further information.'"

31.1(7) Section 5-203.15 shall be amended so that a carbonating device in a food establishment shall have a dual check valve which shall be installed so that it is upstream from the carbonating device and downstream from any copper in the water supply line.

31.1(8) Section 2-301.15 shall be amended by adding the following: "Establishments originally licensed prior to the effective date of this law, January 1, 1999, where a combination sink was approved by the department of inspections and appeals for both hand washing and use as a service sink can use this combination sink for both hand washing and as a service sink for the disposal of mop water as long as the establishment is not remodeled."

31.1(9) Section 5-203.13 is amended so that food service establishment license holders for establishments built prior to January 1, 1979, are not required to have a service or utility sink for the disposal of mop water unless the establishment is remodeled.

31.1(10) Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments.

31.1(11) Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(12) Paragraph 5-402.11(C) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air gap of not less than one inch between the outlet and the rim of the floor sink or receptor."

481—31.2(137F) Food processing plant standards.

1. Standards used to inspect establishments where wholesale food is manufactured, processed, packaged or stored are found in the Code of Federal Regulations in 21 CFR, Part 110, April 1, 1998, publication, "Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding Human Food."

2. Standards used to inspect establishments where bakery products, flour, cereals, food dressings and flavorings are manufactured on a wholesale basis are found in the Code of Federal Regulations, in 21 CFR, Parts 136, 137 and 169, April 1, 1998, publication.

3. Standards used to inspect establishments which process low-acid food in hermetically sealed containers are

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found in 21 CFR, Part 113, April 1, 1998, "Thermally Processed Low-Acid Food Packaged in Hermetically Sealed Containers."

4. Standards used to inspect establishments which process acidified foods are found in 21 CFR, Part 114, April 1, 1998, "Acidified Foods."

5. Standards used to inspect establishments which process bottled drinking water are found in the Code of Federal Regulations in 21 CFR, Parts 129 and 165, April 1, 1998, publication, "Processing and Bottling of Bottled Drinking Water" and "Beverages."

6. In addition to compliance with subrule 481—31.2(1), manufacturers of packaged ice must comply with the following:

- Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which includes the use of sanitizers to eliminate micro-organisms must be developed and used.

- Packaged ice must be tested every 120 days for the presence of bacteria.

- Plants that use a non-public water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination.

Copies of these regulations are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083.

481—31.3(137F) Trichinae control for pork products prepared at retail. Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 1998, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service shall meet the requirements of this rule.

481—31.4(137F) Demonstration of knowledge. Section 2-102.11 shall be amended by adding the following: "Completion of a certified food protection program by the person in charge who has shown proficiency of the required information through passing a test that is part of an approved program. Course content, teaching materials, testing criteria, test administration and security, and qualification of instructors must be approved by the department. A list of approved food certification course(s) will be maintained by the department and is available upon request."

481—31.5(137F) Labeling. The following labeling standards are required in addition to those in the Food Code. Labels on or with packaged foods shall be in legible English and state:

1. The true name, brand or trademark of the article;
2. The names of all ingredients in the food, beginning with the one present in the largest proportion and in descending order of predominance;

3. The quantity of the contents in terms of weight, measure or numerical count;

4. The name and address of the manufacturer, packer, importer, distributor or dealer.

Foods and food products labeled in conformance with the labeling requirements of the government of the United States

as listed in the Code of Federal Regulations in 21 CFR, April 1, 1998, publication, Parts 101 and 102, are considered in compliance with the Iowa labeling law.

481—31.6(137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402.

Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

481—31.7(137F) Mobile food units/pushcarts. In addition to the Food Code provisions outlined in the FDA Food Code Mobile Food Establishment Matrix, mobile food units/pushcarts must comply with the following:

31.7(1) All mobile food units/pushcarts must be licensed by the department. Applications for licenses are available from the Inspections Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083. The unit shall be inspected by a representative of the department and determined to be in compliance with the rules and regulations of the department prior to the granting of the license.

31.7(2) All equipment and utensils, including the interior of cabinet units or storage compartments, shall be smooth, nonabsorbent and easily cleanable.

31.7(3) During operation, food shall not be displayed, stored or served from any place other than the unit or other licensed facility.

31.7(4) Food condiments shall be in prepackaged, individual servings or dispensed from department-approved containers.

31.7(5) Potentially hazardous foods shall be maintained at 41°F or below, or 140°F or above. Frozen foods shall be kept frozen.

31.7(6) Mobile food units/pushcarts which handle un-packaged food are required to meet the following conditions, in addition to those listed in subrules 31.7(1) to 31.7(5):

- a. A hand-washing sink, equipped with pressurized hot and cold running water, shall be installed in all mobile food units/pushcarts.

- b. The mobile/pushcart unit shall contain a fresh water supply tank and a permanently installed waste retention tank with a capacity at least 15 percent larger than the water supply tank.

- c. The unit shall contain hand cleanser and sanitary towels.

- d. All units shall either contain a three-compartment sink or shall have access, at least daily, to a three-compartment sink located at another licensed establishment, where utensils and equipment can be washed, rinsed and sanitized.

- e. A sanitizing solution shall be provided on the location of the mobile/pushcart so the unit and utensils can be kept cleaned and sanitized.

481—31.8(137F) Enforcement. Violation of these rules or any provision of 1998 Iowa Acts, chapter 1162, is a simple misdemeanor. The department may employ various remedies if violations are discovered:

1. A license may be revoked or suspended.

2. An injunction may be sought.

3. A case may be referred to a county or city attorney for criminal prosecution.

481—31.9(137F) Toilets and lavatories.

31.9(1) Retail food establishment license holders. Toilets and lavatories shall be well lighted and available to em-

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ployees and patrons at all times. Retail food establishments built or remodeled after July 1, 1986, shall be electrically vented to the outside of the building.

31.9(2) Food service establishment license holders.

a. Toilets and lavatories shall be well lighted and available to employees and patrons at all times. Establishments built or remodeled after January 1, 1979, shall be electrically vented to the outside of the building. On-site restrooms are not required in the licensed premises when the licensed premises does not have on-site seating, and restrooms in the mall or shopping center are convenient and available to patrons and employees at all times.

b. Separate toilet facilities for men and women shall be provided in:

(1) Places built or remodeled after January 1, 1979, which seat 50 or more people, or

(2) All places built or remodeled after January 1, 1979, which serve beer or alcoholic beverages.

481—31.10(137F) Warewashing sinks in establishments serving alcoholic beverages. When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.

481—31.11(137F) Criminal offense—conviction of license holder.

31.11(1) The department may revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a felony as a result.

31.11(2) The department may suspend or revoke the license of a license holder who:

a. Conducts an activity constituting a criminal offense in the licensed food establishment; and

b. Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

31.11(3) A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

31.11(4) The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of 481—30.13(10A).

These rules are intended to implement 1998 Iowa Acts, chapter 1162, section 12.

ITEM 2. Rescind and reserve 481—Chapters 32 and 33.

ARC 8574A**INSURANCE DIVISION[191]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 523A.16 and 523E.16, the Insurance Division hereby gives Notice of

Intended Action to amend Chapter 19, “Prearranged Funeral Contracts,” Iowa Administrative Code.

This proposed rule authorizes the administrator to deny, suspend, or revoke an application or sales permit of a salesperson, upon notification by the College Student Aid Commission of a default on obligations owed to or collected by the Commission.

Any interested person may comment on the proposed rule on or before January 5, 1999. Comments should be submitted to Dennis Britson, Iowa Securities Bureau, 340 E. Maple Street, Des Moines, Iowa 50319-0066. Comments also may be transmitted via facsimile to (515)281-6467.

This rule is intended to implement 1998 Iowa Acts, chapter 1081.

The following rule is proposed.

Adopt the following new rule 191—19.24(77GA, ch1081):

191—19.24(77GA, ch1081) Denial, suspension or revocation of sales permit for failure to pay debts owed to or collected by the college student aid commission.

19.24(1) Issuance of notice. Upon receipt from the college student aid commission of a certificate of noncompliance for defaults on debts owed to or collected by the commission, the administrator shall issue a notice to a salesperson that the pending application for sales permit or current sales permit will be denied, suspended or revoked. The notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure, unless the salesperson accepts service personally or through authorized counsel.

19.24(2) Notice contents. The notice referred to in sub-rule 19.24(1) shall state all of the following:

a. The administrator intends to deny, suspend, or revoke an application or sales permit in 30 days due to the receipt of a certificate of noncompliance from the college student aid commission.

b. The salesperson must contact the college student aid commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the college student aid commission furnishes to the administrator a withdrawal of a certificate of noncompliance within 30 days of issuance of the notice, the salesperson's application, request for renewal or current sales permit shall be denied, revoked or suspended.

d. The salesperson served shall not have a right to a hearing before the administrator but may request a court hearing pursuant to 1998 Iowa Acts, chapter 1081, section 7, within 30 days of the provision of notice.

19.24(3) Automatic stay. The filing of an application for hearing with the district court pursuant to 1998 Iowa Acts, chapter 1081, section 7, shall automatically stay action of the administrator until the administrator is notified of the resolution of the application.

19.24(4) Effective date of action. If the administrator does not receive a withdrawal of the certificate of noncompliance from the college student aid commission or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or sales permit 30 days after the notice prescribed in sub-rule 19.24(2) is issued.

19.24(5) Withdrawal of certificate. If the administrator receives a withdrawal of the certificate of noncompliance from the college student aid commission, the administrator shall immediately halt action to deny, suspend or revoke an application or sales permit. The salesperson shall be notified

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that action has been halted. If an application or sales permit has already been denied, suspended or revoked, the salesperson shall reapply for a sales permit and the application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations or orders.

19.24(6) Application fees. All application fees must be paid by the salesperson before a sales permit will be issued, after the administrator has denied, suspended or revoked a sales permit pursuant to 1998 Iowa Acts, chapter 1081.

19.24(7) Sharing of information. Notwithstanding any statutory confidentiality provision, the administrator may share information with the college student aid commission for the sole purpose of identifying salespersons subject to enforcement under 1998 Iowa Acts, chapter 1081.

These rules are intended to implement 1998 Iowa Acts, chapter 1081.

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 502.607, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

This proposed rule authorizes the administrator to deny, suspend, or revoke an application or license of a securities agent or investment adviser representative, upon notification by the College Student Aid Commission of a default on obligations owed to or collected by the Commission.

Any interested person may comment on the proposed rule on or before January 5, 1999. Comments should be submitted to Craig A. Goetsch, Iowa Securities Bureau, 340 E. Maple Street, Des Moines, Iowa 50319-0066. Comments also may be transmitted via facsimile to (515)281-6467.

This rule is intended to implement 1998 Iowa Acts, chapter 1081.

The following rule is proposed.

Adopt **new** rule 191—50.6(261) as follows:

191—50.6(261) Denial, suspension or revocation of license for failure to pay debts owed to or collected by the college student aid commission.

50.6(1) Issuance of notice. Upon receipt from the college student aid commission of a certificate of noncompliance for defaults on debts owed to or collected by the commission, the administrator shall issue a notice to a securities agent or investment adviser representative applicant or licensee that the pending application for licensure or current license will be denied, suspended or revoked. The notice shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure, unless the applicant or licensee accepts service personally or through authorized counsel.

50.6(2) Notice contents. The notice referred to in subrule 50.6(1) shall state all of the following:

a. The administrator intends to deny, suspend, or revoke an application or license due to the receipt of a certificate of noncompliance from the college student aid commission.

b. The applicant or licensee must contact the college student aid commission to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance.

c. Unless the college student aid commission furnishes to the administrator a withdrawal of a certificate of noncompliance within 30 days of issuance of the notice, the application or license shall be denied, revoked or suspended.

d. The applicant or licensee served shall not have a right to a hearing before the administrator but may request a court hearing pursuant to 1998 Iowa Acts, chapter 1081, section 7, within 30 days of the provision of notice.

50.6(3) Automatic stay. The filing of an application for hearing with the district court pursuant to 1998 Iowa Acts, chapter 1081, section 7, shall automatically stay action of the administrator until the administrator is notified of the resolution of the application.

50.6(4) Effective date of action. If the administrator does not receive a withdrawal of the certificate of noncompliance from the college student aid commission or a notice that an application for district court hearing has been filed, the administrator shall deny, suspend or revoke the application or license 30 days after the notice prescribed in subrule 50.6(2) is issued.

50.6(5) Withdrawal of certificate. If the administrator receives a withdrawal of the certificate of noncompliance from the college student aid commission, the administrator shall immediately halt action to deny, suspend or revoke an application or license. The applicant or licensee shall be notified that action has been halted. If an application or license has already been denied, suspended or revoked, the applicant or former licensee shall reapply for licensure and the application shall be granted if the individual is otherwise in compliance with applicable laws, rules, regulations or orders.

50.6(6) Application fees. All application fees must be paid by the applicant before a license will be issued, after the administrator has denied, suspended or revoked a license pursuant to 1998 Iowa Acts, chapter 1081.

50.6(7) Sharing of information. Notwithstanding any statutory confidentiality provision, the administrator may share information with the college student aid commission for the sole purpose of identifying applicants or licensees subject to enforcement under 1998 Iowa Acts, chapter 1081.

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INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 502.607, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 50, "Regulation of Securities Offerings and Those Who Engage in the Securities Business," Iowa Administrative Code.

INSURANCE DIVISION[191](cont'd)

These proposed rules set forth certain definitions and requirements for those who wish to become licensed as investment advisers and investment adviser representatives.

Any interested person may submit written comments about the proposed rules on or before January 14, 1999. These comments should be directed to Craig A. Goettsch, Superintendent of Securities, Iowa Securities Bureau, 340 E. Maple Street, Des Moines, Iowa 50319-0066. Comments may be transmitted by facsimile to (515)281-6467.

A public hearing on the proposed rules will be held at 10 a.m. on January 14, 1999, in the Lobby Conference Room of the Insurance Division, 330 East Maple Street, Des Moines, Iowa 50319-0066 (north entrance to the building).

These rules are intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

The following rules are proposed.

ITEM 1. Adopt the following new rule 191—50.100(502):

191—50.100(502) Definition of investment adviser representative of a federal covered adviser.

50.100(1) The term “investment adviser representative” as used in Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, and as employed by or associated with a federal covered adviser only includes a person who has a “place of business” in this state, as defined in 50.100(2)“d,” and who either:

a. Is a “supervised person,” as defined in 50.100(2)“c,” provided the supervised person:

(1) Has clients more than 10 percent of whom are natural persons, other than “excepted persons,” as defined in 50.100(2)“a,” or has no more than five clients who are natural persons other than “excepted persons” as defined in 50.100(2)“a.”

(2) On a regular basis solicits, meets with, or otherwise communicates with clients of a federal covered adviser, and

(3) Does not provide only “impersonal investment advice,” as defined in 50.100(2)“b”; or who

b. Is not a “supervised person” as that term is defined in 50.100(3)“c,” and solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered adviser.

50.100(2) For purposes of subrule 50.100(1):

a. “Excepted person” means a natural person:

(1) Who immediately after entering into the investment advisory contract with the investment adviser has at least \$750,000 under management with the investment adviser;

(2) Whom the investment adviser reasonably believes, immediately prior to entering into the advisory contract, has a net worth (together with assets held jointly with a spouse) of more than \$1,500,000 at the time the contract is entered into;

(3) Who owns not less than \$5,000,000 in investments at the time the advisory contract is entered into;

(4) Who is an executive officer, director, trustee, general partner or person serving in a similar capacity, of the federal covered adviser; or

(5) Who is an employee of the federal covered adviser (other than an employee performing solely clerical, secretarial or administrative functions with regard to the federal covered adviser) and who, in connection with the employee’s regular functions or duties, participates in the investment activities of such federal covered adviser, provided that such employee has been performing such functions and duties for or on behalf of the federal covered adviser, or substantially similar functions or duties for or on behalf of another company for at least 12 months.

b. “Impersonal investment advice” means investment advisory services provided by means of written material or oral statements that do not purport to meet the objectives or needs of specific individuals or accounts.

c. “Supervised person” means any partner, officer, director (or other person occupying a similar status or performing similar functions), or employee of an investment adviser, or other person who provides investment advice on behalf of the investment adviser and is subject to the supervision and control of the investment adviser.

d. “Place of business” means:

(1) An office at which the investment adviser representative regularly provides investment advisory services, solicits, meets with, or otherwise communicates with clients, or

(2) Any other location that is held out to the general public as a location at which the investment adviser representative provides investment advisory services, solicits, meets with, or otherwise communicates with clients.

e. “Client” means

(1) A natural person and any of the following:

1. Any minor child of the natural person;

2. Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

3. All accounts of which the natural person or the persons referred to in 50.100(2)“e,” or both, are the only primary beneficiaries; and

4. All trusts of which the natural person or the person referred to in 50.100(2)“e,” or both, are the only primary beneficiaries;

(2) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in 50.100(2)“e”(1)“4”), or other legal organization (any of which are referred to hereinafter as a “legal organization”) that receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an “owner”); and

(3) Two or more legal organizations referred to in subparagraph 50.100(2)“e”(2) that have identical owners.

50.100(3) Supervised persons may rely on the definition of “client” in subrule 50.100(2) to identify clients for purposes of subrule 50.100(1), except that supervised persons need not count clients that are not residents of the United States.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 2. Adopt the following new rule 191—50.101(502):

191—50.101(502) Investment adviser disclosure statement.

50.101(1) Unless otherwise provided, an investment adviser, registered or required to be registered pursuant to Iowa Code section 502.301, shall furnish each advisory client and prospective advisory client with a written disclosure statement. The disclosure statement may be a copy of Part II of the adviser’s Form ADV or written documents containing at least the information then required by Part II of Form ADV, or such other information as the administrator may require.

50.101(2) Except as provided in paragraph “c” below, an investment adviser shall deliver the written disclosure statement to an advisory client or prospective advisory client as follows:

a. Not less than 48 hours prior to entering into any investment advisory contract with the client or prospective client; or

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b. At the time of entering into the contract, if the advisory client has the right to terminate the contract without penalty within five business days after entering into the contract. The disclosure statement need not be delivered in connection with entering into a contract for impersonal advisory services.

50.101(3) Except as provided in paragraph "a" below, an investment adviser shall annually deliver, or offer in writing to deliver upon written request, the written disclosure statement to each of the adviser's advisory clients without charge.

a. The disclosure statement need not be delivered or offered to advisory clients receiving services solely pursuant to a contract for impersonal advisory services requiring a payment of less than \$200.

b. With respect to an advisory client entering into a contract or receiving advisory services pursuant to a contract for impersonal advisory services which requires a payment of \$200 or more, an offer of the type specified in this rule shall also be made at the time of entering into an advisory contract. The investment adviser shall deliver the written statement to the client within seven days of receiving a written request made pursuant to an offer required by this rule.

50.101(4) An investment adviser that renders substantially different types of advisory services to different advisory clients may omit information required by Part II of Form ADV from the statement furnished to an advisory client or prospective advisory client, if the omitted information applies only to a type of investment advisory service or fee which is not rendered or charged, or proposed to be rendered or charged, to that client or prospective client.

50.101(5) Nothing in this rule shall relieve any investment adviser from any obligation pursuant to any provision of Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, or the rules thereunder or other federal or state law to disclose any information to the adviser's advisory clients or prospective advisory clients not specifically required by this rule.

50.101(6) For purposes of this rule:

a. Contract for impersonal advisory services means any contract relating solely to the provision of investment advisory services:

(1) By means of written material or oral statements which do not purport to meet the objectives or needs of specific individuals or accounts;

(2) Through the issuance of statistical information containing no expression of opinion as to the investment merits of a particular security; or

(3) Any combination of the foregoing services.

b. Entering into, in reference to an investment advisory contract, does not include an extension or renewal without material change of the contract which is in effect immediately prior to the extension or renewal.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 3. Adopt the following new rule 191—50.103(502):

191—50.103(502) Cash solicitation.

50.103(1) It shall constitute an act, practice, or course of conduct which operates as a fraud or deceit upon a person, as provided under Iowa Code section 502.401(3), for any investment adviser to pay a cash fee, directly or indirectly, to a solicitor with respect to solicitation activities unless:

a. The solicitor is not a person:

(1) Subject to an order issued by the administrator under Iowa Code section 502.304(1), or

(2) Convicted within the previous ten years of any felony or misdemeanor involving conduct described in Iowa Code section 502.304(1)"c," or

(3) Who has been found by the administrator to have engaged, or has been convicted of engaging, in any of the conduct specified in Iowa Code section 502.405, 502.304(1)"b," or 502.304(1)"j," or has materially aided in the act of violation of 502.304(1)"d," or

(4) Subject to an order, judgment, or decree described in Iowa Code section 502.304(1)"d," or

(5) Described in the rules implementing Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106; and

b. Such cash fee is paid pursuant to a written agreement to which the adviser is a party; and

c. Such cash fee is paid to a solicitor:

(1) With respect to solicitation activities for the provision of impersonal advisory services only; or

(2) Who is:

1. A partner, officer, director or employee of such investment adviser, or

2. A partner, officer, director or employee of a person who controls, is controlled by, or is under common control with such investment adviser, provided that the status of such solicitor as a partner, officer, director or employee of such investment adviser or other person, and any affiliation between the investment adviser and any such other person, is disclosed to the client at the time of the solicitation or referral; or

(3) Other than a solicitor specified in 50.103(1)"c"(1) or 50.103(1)"c"(2) above if all of the following conditions are met:

1. The written agreement required by 50.103(1)"b":

• Describes the solicitation activities to be engaged in by the solicitor on behalf of the investment adviser and the compensation to be received therefor;

• Contains an undertaking by the solicitor to perform the solicitor's duties under the agreement in a manner consistent with the instructions of the investment adviser and the provisions of Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, and the rules promulgated thereunder, whichever is applicable;

• Requires that the solicitor, at the time of any solicitation activities for which compensation is paid or to be paid by the investment adviser, provide the client with a current copy of the investment adviser's written disclosure statement required by these rules or SEC Rule 204-0, as applicable, and a separate written disclosure statement as described in subrule 50.103(2).

2. The investment adviser receives from the client, prior to, or at the time of, entering into any written or oral investment advisory contract with such client, a signed and dated acknowledgment of receipt of the investment adviser's written disclosure statement and the solicitor's written disclosure document.

3. The investment adviser makes a bona fide effort to ascertain whether the solicitor has complied with the agreement, and has a reasonable basis for believing that the solicitor has so complied.

50.103(2) The separate written disclosure statement required to be furnished by the solicitor to the client pursuant to 50.103(1)"c"(3)"3" shall contain the following information:

a. The name of the solicitor;

b. The name of the investment adviser;

c. The nature of the relationship, including any affiliation, between the solicitor and the investment adviser;

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d. A statement that the solicitor will be compensated for the solicitor's solicitation services by the investment adviser;

e. The terms of such compensation arrangement, including a description of the compensation paid or to be paid to the solicitor; and

f. The amount, if any, the client will be charged for the cost of obtaining the client's account in addition to the advisory fee, and the differential, if any, among clients, with respect to the amount or level of advisory fees charged by the investment adviser, if such differential is attributable to the existence of any arrangement pursuant to which the investment adviser has agreed to compensate the solicitor for soliciting clients for, or referring clients to, the investment adviser.

(1) Nothing in this rule shall be deemed to relieve any person of any fiduciary duty or other obligation to which such person may be subject under any law.

(2) For the purposes of this rule:

1. "Solicitor" means any person who, directly or indirectly, solicits any client for, or refers any client to, an investment adviser.

2. "Client" includes any prospective client.

3. "Impersonal advisory services" means investment advisory services provided solely by means of written materials or oral statements which do not purport to meet the objectives or needs of the specific client, statistical information containing no expressions of opinions as to the investment merits of particular securities, or any combination of the foregoing services.

(3) The investment adviser shall retain a copy of each written agreement required by this rule as a part of the records required to be kept under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, and the rules promulgated thereunder.

(4) The investment adviser shall retain a copy of each acknowledgment and solicitor disclosure document referred to in this rule as part of the records required to be kept under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, and the rules promulgated thereunder.

(5) An investment adviser registered in this state whose principal place of business is located outside this state shall not be subject to the record maintenance requirements of 50.103(2)"f"(3) or 50.103(2)"f"(4) if such investment adviser:

1. Is registered or licensed as an investment adviser in the state in which the adviser maintains the adviser's principal place of business;

2. Is in compliance with the applicable books and records requirements of the state in which the adviser maintains the adviser's principal place of business; and

3. The provisions of this rule would require the investment adviser to maintain books or records in addition to those required by the laws of the state in which the investment adviser maintains the adviser's principal place of business.

(6) As used herein, "principal place of business" of an investment adviser means the executive office of the investment adviser from which the officers, partners, or managers of the investment adviser direct, control, and coordinate the activities of the investment adviser.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 4. Adopt the following new rule 191—50.104(502):

191—50.104(502) Unethical business practices of investment advisers, and investment adviser representatives, or fraudulent or deceptive conduct by federal covered advisers.

50.104(1) A person who is an investment adviser, an investment adviser representative, or a federal covered adviser is a fiduciary and has a duty to act primarily for the benefit of the adviser's clients. The provisions of this rule apply to federal covered advisers to the extent that the conduct alleged is fraudulent, deceptive, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290). While the extent and nature of this duty varies according to the nature of each relationship and the circumstances of each case, an investment adviser and an investment adviser representative shall not engage in unethical business practices, and a federal covered adviser shall not engage in fraudulent or deceptive conduct, including the following:

a. Recommending to a client to whom investment supervisory, management, or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known by the investment adviser.

b. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within ten business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

c. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account if the adviser in such situations can directly benefit from the number of securities transactions effected in a client's account. The rule appropriately forbids an excessive number of transaction orders to be induced by an adviser for a "customer's account."

d. Placing an order to purchase or sell a security for the account of a client without authority to do so.

e. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party trading authorization from the client.

f. Borrowing money or securities from a client unless the client is a member of the investment adviser's or investment adviser representative's immediate family.

g. Loaning money to a client unless the client is a member of the investment adviser's or investment adviser representative's family.

h. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment adviser, investment adviser representative, or any employee of the investment adviser or investment adviser representative, or misrepresenting the nature of the advisory services being offered or the fees to be charged for such service, or omitting to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made.

i. Providing a report or recommendation to any advisory client prepared by someone other than the adviser without disclosing that fact. This prohibition does not apply to a situ-

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ation where the adviser uses published research reports or statistical analyses to render advice or where an adviser orders such a report in the normal course of providing service.

j. Charging a client an advisory fee that is unreasonable in light of any of the following factors: the type of services to be provided, the experience of the adviser, the sophistication and bargaining power of the client, and whether the adviser has disclosed that lower fees for comparable services may be available from other sources.

k. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the adviser or any of the adviser's employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

(1) Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; and

(2) Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the adviser or the adviser's employees.

l. Guaranteeing a client that a specific result will be achieved (gain or no loss) with advice which will be rendered.

m. Publishing, circulating or distributing any advertisement which does not comply with Rule 206(4)-1 under the Investment Advisers Act of 1940.

n. Disclosing the identity, affairs, or investments of any client unless required by law to do so, or unless consented to by the client.

o. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment adviser has custody or possession of such securities or funds when the adviser's action is subject to and does not comply with the requirements of Reg. 206(4)-2 under the Investment Advisers Act of 1940.

p. Entering into, extending or renewing any investment advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the adviser, and that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract.

q. Failing to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material nonpublic information contrary to the provisions of Section 204A of the Investment Advisers Act of 1940.

r. Entering into, extending, or renewing any advisory contract contrary to the provisions of Section 205 of the Investment Advisers Act of 1940. This provision shall apply to all advisers registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, notwithstanding whether such adviser would be exempt from federal registration pursuant to Section 203(b) of the Investment Advisers Act of 1940.

s. Indicating, in an advisory contract, any condition, stipulation, or provisions binding any person to waive compliance with any provision of Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, or of the Investment Advisers Act of 1940, or any other practice contrary to the provisions of Section 215 of the Investment Advisers Act of 1940.

t. Engaging in any act, practice, or course of business which is fraudulent, deceptive, or manipulative contrary to the provisions of Section 206(4) of the Investment Advisers Act of 1940, notwithstanding the fact that such investment adviser is not registered or required to be registered under Section 203 of the Investment Advisers Act of 1940.

u. Engaging in conduct or any act, indirectly or through or by any other person, which would be unlawful for such person to do directly under the provisions of this Act or any rule or regulation thereunder.

50.104(2) The conduct set forth in subrule 50.104(1) is not inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices shall be deemed an unethical business practice. The federal statutory and regulatory provisions referenced herein shall apply to investment advisers, investment adviser representatives, and federal covered advisers to the extent permitted by the National Securities Markets Improvement Act of 1996 (NSMIA)(Pub. L. No. 104-290).

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 5. Adopt the following new rule 191—50.105(502):

191—50.105(502) Custody of client funds or securities.

50.105(1) It is unlawful for an investment adviser to take or have custody of any securities or funds of any client unless:

a. The investment adviser notifies the administrator in writing that the investment adviser has or may have custody;

b. The securities of each client are segregated, marked to identify the particular client having the beneficial interest in those securities, and held in safekeeping in a place free from risk of destruction or other loss;

c. All client funds are deposited as follows:

(1) In one or more bank accounts containing only clients' funds;

(2) The account or accounts are maintained in the name of the investment adviser as agent or trustee for the clients; and

(3) The investment adviser maintains a separate record for each account showing the name and address of the bank where the account is maintained, the dates and amounts of deposits in and withdrawals from the accounts, and the exact amount of each client's beneficial interest in the account;

d. Immediately after accepting custody or possession of funds or securities from any client, the investment adviser notifies the client in writing of the place and manner in which the funds and securities will be maintained and, subsequently, if or when there is a change in the place or the manner in which the funds or securities are maintained, the investment adviser gives written notice to the client;

e. At least once every three months, the investment adviser sends to each client an itemized statement showing the client's funds and securities in the investment adviser's custody at the end of the period, and all debits, credits and transactions in the client's account during that period; and

f. At least once every calendar year, an independent certified public accountant or public accountant verifies all client funds and securities by an actual examination, which shall be made at a time chosen by the accountant without prior notice to the investment adviser. A report stating that the accountant has made an examination of the client funds and securities in the custody of the investment adviser, and describing the nature and extent of the examination, shall be filed with the administrator within 30 days after each ex-

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amination. The effective date of this paragraph shall be one year after adoption.

50.105(2) Reserved.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 6. Adopt the following new rule 191—50.106(502):

191—50.106(502) Minimum financial requirements for investment advisers.

50.106(1) An investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, who has custody of client funds or securities shall maintain at all times a minimum net worth of \$35,000, and every investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, who has discretionary authority over client funds or securities but does not have custody of client funds or securities shall maintain at all times a minimum net worth of \$10,000.

50.106(2) An investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, who accepts prepayment of more than \$500 per client and six or more months in advance shall maintain at all times a positive net worth.

50.106(3) Unless otherwise exempted, as a condition of the right to transact business in this state, every investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, shall by the close of business on the next business day notify the administrator if such investment adviser's net worth is less than the minimum required. After transmitting such notice, each investment adviser shall file by the close of business on the next business day a report with the administrator of the adviser's financial condition, including the following:

- a. A trial balance of all ledger accounts;
- b. A statement of all client funds or securities which are not segregated;
- c. A computation of the aggregate amount of client ledger debit balances; and
- d. A statement as to the number of client accounts.

50.106(4) For the purposes of this rule, the term "net worth" shall mean an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include the following as assets: prepaid expenses (except items properly classified as assets under generally accepted accounting principles), deferred charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobile(s), and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

50.106(5) For the purposes of this rule, a person will be deemed to have custody if the person directly or indirectly holds client funds or securities, has any authority to obtain possession of them, or has the ability to appropriate them.

50.106(6) The administrator may require that a current appraisal be submitted in order to establish the worth of any asset.

50.106(7) Every investment adviser whose principal place of business is in a state other than this state shall maintain only such minimum capital as required by the state in which the investment adviser maintains the adviser's princi-

pal place of business, provided the investment adviser is licensed in such state and is in compliance with such state's minimum capital requirements.

The effective date of this rule shall be one year after adoption.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 7. Adopt the following new rule 191—50.107(502):

191—50.107(502) Bonding requirements for certain investment advisers.

50.107(1) Any bond required by this rule shall be issued by a company qualified to do business in this state in the form determined by the administrator and shall be subject to the claims of all clients of such investment adviser regardless of the client's state of residence.

a. Every investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, having custody of or discretionary authority over client funds or securities shall be bonded in an amount determined by the administrator based upon the number of clients and the total assets under management of the investment adviser.

b. Every investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, who has custody of or discretionary authority over client funds or securities and who does not meet the minimum net worth standard in subrule 50.106(1) shall be bonded in the amount of net worth deficiency rounded up to the nearest \$5000.

50.107(2) An investment adviser whose principal place of business is in a state other than this state shall be exempt from the requirements of subrule 50.107(1), provided that the investment adviser is registered as an investment adviser in the state of the adviser's principal place of business and is in compliance with such state's requirements relating to bonding.

The effective date of this rule shall be one year after adoption.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

ITEM 8. Adopt the following new rule 191—50.108(502):

191—50.108(502) Record-keeping requirements for investment advisers.

50.108(1) Every investment adviser registered or required to be registered under Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, shall make and keep true, accurate and current the following books, ledgers and records:

a. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

b. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

c. A memorandum of each order given by the investment adviser for the purchase or sale of any security, of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with

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the investment adviser who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, or broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

d. All checkbooks, bank statements, canceled checks and cash reconciliations of the investment adviser.

e. All bills or statements (or copies of bills or statements), paid or unpaid, relating to the investment adviser's business as an investment adviser.

f. All trial balances, financial statements, and internal audit working papers relating to the investment adviser's business as an investment adviser. For purposes of this rule, "financial statements" shall mean a balance sheet prepared in accordance with generally accepted accounting principles, an income statement, a cash flow statement and a net worth computation.

g. Originals of all written communications received and copies of all written communications sent by the investment adviser relating to:

(1) Any recommendation made or proposed to be made and any advice given or proposed to be given,

(2) Any receipt, disbursement or delivery of funds or securities, or

(3) The placing or execution of any order to purchase or sell any security.

The investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser. If the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than ten persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of the notice, circular or advertisement a memorandum describing the list and its source.

h. A list or other record of all accounts which list identifies the accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client.

i. A copy of all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser.

j. A copy in writing of each agreement entered into by the investment adviser with a client, and all other written agreements otherwise relating to the investment adviser's business as an investment adviser.

k. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media) recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

l. A record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by rea-

son of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)"1," "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with the employee's duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations: any person in a control relationship to the investment adviser, any affiliated person of a controlling person and any affiliated person of an affiliated person.

(4) For the purposes of 50.108(1)"1," "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(5) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)"1" because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

m. Notwithstanding the provisions of 50.108(1)"1," when the investment adviser is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of the investment adviser has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and transactions in securities which are direct obligations of the United States.

(1) The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale, or other acquisition or disposition); the price at which it was effected; and the name of the broker-dealer or bank with or through whom the transaction was effected.

(2) The record may also contain a statement declaring that the reporting or recording of any transaction shall not be

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construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than ten days after the end of the calendar quarter in which the transaction was effected.

(3) For the purposes of 50.108(1)"m," an investment adviser is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of the adviser's most recent three fiscal years or for the period of time since organization, whichever is the lesser, the investment adviser derived, on an unconsolidated basis, more than 50 percent of the adviser's total sales and revenues, and the adviser's income or loss before income taxes and extraordinary items, from such other business or businesses.

(4) For purposes of 50.108(1)"m," "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, shall mean any partner, officer, director or employee of the investment adviser who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment adviser prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

1. Any person in a control relationship to the investment adviser;

2. Any affiliated person of a controlling person; and

3. Any affiliated person of an affiliated person.

(5) For the purposes of 50.108(1)"m," "control" shall mean the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company shall be presumed to control such company.

(6) An investment adviser shall not be deemed to have violated the provisions of 50.108(1)"m" because of the failure to record securities transactions of any advisory representative if the investment adviser establishes that the adviser instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

n. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of the investment adviser in accordance with the provisions of Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106, and these rules, and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

o. For each client that was obtained by the adviser by means of a solicitor to whom a cash fee was paid by the adviser:

(1) Evidence of a written agreement to which the adviser is a party related to the payment of such fee;

(2) A signed and dated acknowledgment of receipt from the client evidencing the client's receipt of the investment adviser's disclosure statement and a written disclosure statement of the solicitor; and

(3) A copy of the solicitor's written disclosure statement. The written agreement, acknowledgment and solicitor dis-

closure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

(4) For purposes 50.108(1)"o," the term "solicitor" shall mean any person or entity that, for compensation, acts as an agent of an investment adviser in referring potential clients.

p. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment adviser circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment adviser); provided, however, that, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.

q. A file containing a copy of all written communications received or sent regarding any litigation involving the investment adviser or any investment adviser representative or employee, and regarding any written customer or client complaint.

r. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to such client.

s. Written procedures to supervise the activities of employees and investment adviser representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

t. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self-regulatory organization and that pertains to the registrant or its investment adviser representatives as that term is defined in 50.108(1)"l"(3), which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

50.108(2) If an investment adviser subject to subrule 50.108(1) has custody or possession of securities or funds of any client, the records required to be made and kept under subrule 50.108(1) shall include:

a. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for all accounts and all other debits and credits to the accounts.

b. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

c. Copies of confirmations of all transactions effected by or for the account of any client.

d. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

50.108(3) Every investment adviser subject to subrule 50.108(1) who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the

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investment adviser, make and keep true, accurate and current:

a. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

b. For each security in which any client has a current position, information from which the investment adviser can promptly furnish the name of each client, and the current amount or interest of the client.

50.108(4) Any books or records required by this rule may be maintained by the investment adviser in such manner that the identity of any client to whom the investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation.

50.108(5) Every investment adviser subject to subrule 50.108(1) shall preserve the following records in the manner prescribed:

a. All books and records required to be made under the provisions of paragraphs 50.108(1)"a" to 50.108(3)"a," inclusive, except for books and records required to be made under the provisions of 50.108(1)"k" and 50.108(1)"p," shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years in the principal office of the investment adviser.

b. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

c. Books and records required to be made under the provisions of 50.108(1)"k" and 50.108(1)"p" shall be maintained and preserved in an easily accessible place for a period of not less than five years, the first two years in the principal office of the investment adviser, from the end of the fiscal year during which the investment adviser last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication (including by electronic media).

d. Books and records required to be made under the provisions of 50.108(1)"q" to "t," inclusive, shall be maintained and preserved in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment adviser, or for the time period during which the investment adviser was registered or required to be registered in the state, if less.

e. Notwithstanding other record preservation requirements of this rule, the following records or copies shall be required to be maintained at the business location of the investment adviser from which the customer or client is being provided or has been provided with investment advisory services:

(1) Records required to be preserved under 50.108(1)"c," "g" to "j," "n" and "o," and "q" to "s," subrule 50.108(2) and subrule 50.108(3), and

(2) The records or copies required under the provision of 50.108(1)"k" and 50.108(1)"p," which records or related records identify the name of the investment adviser representative providing investment advice from that business location, or which identify the business location's physical address, mailing address, electronic mailing address, or tele-

phone number. The records will be maintained for the period described in 50.108(5)"c."

50.108(6) An investment adviser subject to subrule 50.108(1), before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this rule, and shall notify the administrator in writing of the exact address where the books and records will be maintained during the period.

50.108(7) The records required to be maintained and preserved pursuant to this rule may be immediately produced or reproduced by photographic film or, as provided in subrule 50.108(8), on magnetic disk, tape or other computer storage medium, and be maintained and preserved for the required time in that form. If records are produced or reproduced by photographic film or computer storage medium, the investment adviser shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the administrator through the administrator's examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance and preservation of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available for the administrator's examination the adviser's records, pursuant to Iowa Code section 502.303, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

50.108(8) Pursuant to subrule 50.108(7), an adviser may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the adviser's business, are created by the adviser on electronic media or are received by the adviser solely on electronic media or by electronic data transmission.

50.108(9) For purposes of this rule, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client.

50.108(10) For purposes of this rule, "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a definite amount of the particular security.

50.108(11) Any book or other record made, kept, maintained and preserved in compliance with Rules 17a-3 (17 CFR 240.17a-3 (1998)) and 17a-4 (17 CFR 240.17a-4 (1998)) under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved under this rule, shall be deemed to be made, kept, maintained and preserved in compliance with this rule.

50.108(12) Every investment adviser that is registered or required to be registered in this state and that has the adviser's principal place of business in a state other than this state shall be exempt from the requirements of this rule, provided

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the investment adviser is licensed in such state and is in compliance with such state's record-keeping requirements, if any.

This rule is intended to implement Iowa Code chapter 502 as amended by 1998 Iowa Acts, chapter 1106.

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LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 88.5, 89B.8 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 3, "Inspections, Citations and Proposed Penalties," and Chapter 120, "Worker Right to Know," Iowa Administrative Code.

These amendments relate to inspection activities, procedures for abatement verification, responses to emergencies, and worker right to know. A provision of 875—Chapter 120 is moved into Chapter 3 and Chapter 120 is rescinded since the requirements are duplicated in Chapter 10.

If requested by January 6, 1999, a public hearing will be held on January 11, 1999, at 9 a.m. in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make oral or written submissions concerning the proposed amendments. Written data or arguments to be considered in adoption may be submitted by interested persons no later than January 12, 1999, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209.

The Division has determined that these amendments may have an impact on small business. This chapter will not necessitate additional annual expenditures exceeding \$100,000 by any political subdivision or agency or any contractor providing services to political subdivisions or agencies.

The Division will issue a regulatory flexibility analysis as provided by Iowa Code section 17A.31 if a written request is filed by delivery or by mailing postmarked no later than January 6, 1999, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. 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 the Act, or an organization of small businesses representing at least 25 persons which is registered with the Division of Labor Services under the Act.

These amendments are intended to implement Iowa Code chapters 88 and 89B.

The following amendments are proposed.

ITEM 1. Amend subrule 3.1(1), introductory paragraph, to read as follows:

3.1(1) Each employer shall post and keep posted a notice or notices informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact the em-

ployer or the department of employment services workforce development, division of labor services. The notice or notices shall be posted by the employer in each establishment in a conspicuous place or places where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced or covered by other materials. The notice or notices will be furnished by the occupational safety and health bureau of the division of labor services.

ITEM 2. Amend subrule 3.1(3) to read as follows:

3.1(3) Copies of the Act, all regulations published in this chapter and all applicable safety and health rules are available from the division of labor services. If an employer has obtained copies of these materials from the division of labor services or the U.S. Department of Labor, the employer shall make them available upon request to any employee or authorized employee representative for review in the establishment where the employee is employed on the same day the request is made or at the earliest time mutually convenient to the employee or authorized employee representative and the employer.

ITEM 3. Amend subrule 3.4(2) to read as follows:

3.4(2) In situations described in 3.4(1), advance notice of inspections may be given only if authorized by the labor commissioner or the commissioner's designee, except that in cases of apparent imminent danger, advance notice may be given by the compliance safety and health officer without such authorization if the labor commissioner or the commissioner's designee is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of the representative is known to the employer. Upon the request of the employer, the compliance safety and health officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the compliance safety and health officer with the identity of the representative and with other information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection. An employer who fails to comply with the obligation under this paragraph rule promptly to inform the authorized representative of employees of the inspection, or to furnish such information as is necessary to enable the compliance safety and health officer promptly to inform the representative of the inspection, may be subject to citation and penalty under Iowa Code section 88.14(3). Advance notice in any of the situations described in subrule 3.4(1) shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in apparent imminent danger situations and in other unusual circumstances.

ITEM 4. Amend subrules 3.5(1) and 3.5(2) to read as follows:

3.5(1) Inspections shall take place at the times and in the places of employment as the labor commissioner or the commissioner's designee may direct. At the beginning of an inspection, compliance safety and health officers shall present their credentials to the owner, operator or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in 875—4.2(88), 875—4.4(88), and 875—subrule 4.5(1) which they wish to review. However, such designation of records shall not preclude access to additional records specified in 29 CFR, Chapter XVII, Sec-

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tion 1903.3 and published in 36 Fed. Reg. 17850 (September 4, 1971).

3.5(2) Compliance safety and health officers shall have authority to take environmental samples and to take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of the establishment. As used herein the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of *cameras, audio and videotaping equipment*, devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees in order to monitor their exposures.

ITEM 5. Amend subrule 3.7(1) to read as follows:

3.7(1) Any employee or representative of employees who believes that a violation of the Act exists in any workplace where the employee is employed may request an inspection of the workplace by giving notice of the alleged violation to the commissioner or a designee. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided the employer or agent by the commissioner's designee no later than at the time of inspection, except that, upon the request of the person giving the notice, the ~~name identity~~ and the ~~names identities~~ of individual employees referred to therein shall not appear in the copy or on any record published, released, or made available by the division of labor services.

ITEM 6. Amend subrule 3.7(3) to read as follows:

3.7(3) Prior to or during any inspection of a workplace, any employee or representative of employees employed in the workplace may notify the compliance safety and health officer, ~~in writing~~, of any violation of the Act which they have reason to believe exists in the workplace. ~~Any such notice shall comply with the requirements of subrule 3.7(1).~~

ITEM 7. Amend subrule 3.11(2) to read as follows:

3.11(2) Each citation or a copy thereof shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest shall not affect the posting responsibility under this rule unless and until the *employment* appeal board issues a final order vacating the citation.

ITEM 8. Amend subrule 3.11(3) to read as follows:

3.11(3) An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the *employment* appeal board and the notice may explain the reasons for the contest. The employer may also indicate that specified steps have been taken to abate the violation.

ITEM 9. Amend subrule 3.11(5) to read as follows:

3.11(5) Any employer to whom a citation and notification of penalty have been issued may, under Iowa Code section 88.8, notify the commissioner of the employer's intention to contest the citation or notification of penalty. The notice of contest shall be in writing. The notice of contest shall be received by the division of labor services or postmarked no later than 15 working days after the receipt by the employer of the citation and notification of penalty. *The notice of contest may be provided to the division of labor services by mail, personal delivery or facsimile transmission.*

ITEM 10. Amend rule 875—3.12(88) to read as follows:

875—3.12(88) Informal conferences. At the request of an affected employer, employee, or representative of employees, the labor commissioner or the commissioner's designee may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The settlement of any issue at the conference shall be subject to the rules of procedure prescribed by the *employment* appeal board. If the conference is requested by the employer, an affected employee or the employee's representative shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the labor commissioner or the commissioner's designee. Any party may be represented by counsel at the conference. No conference or request for a conference shall operate as a stay of any 15-working-day period for filing a notice of intention to contest.

This rule is intended to implement Iowa Code sections 17A.3(1)"b" and 17A.10.

ITEM 11. Amend subrule 3.13(2), paragraph "e," last unnumbered paragraph, to read as follows:

Your employer has been cited by the commissioner of labor for violation of the Iowa Occupational Safety and Health Act and has requested additional time to correct one or more of the violations. Affected employees are entitled to participate as parties under terms and conditions established by the Iowa employment appeal board in its rules of procedure. Affected employees or their representatives desiring to participate must file a written objection to the employer's petition with the commissioner of labor. Failure to file the objection within ten working days of the first posting of the accompanying petition and this notice shall constitute a waiver of any further right to object to the petition or to participate in any proceedings related thereto. Objections shall be sent to the commissioner's designee: IOSH Administrator, Occupational Safety and Health Bureau, Division of *Employment Labor Services*, 1000 East Grand Avenue, Des Moines, Iowa 50319. All papers relevant to this matter may be inspected at: (place reasonably convenient to employees, preferably at or near workplace).

ITEM 12. Renumber rule 875—3.14(88) as 875—3.23(88).

ITEM 13. Reserve rules 875—3.14 to 3.18.

ITEM 14. Adopt new rule 875—3.19(88) to read as follows:

875—3.19(88) Abatement verification.

3.19(1) Scope and application. This rule applies to employers who receive a citation for a violation of the Iowa Occupational Safety and Health Act.

3.19(2) Definitions.

"Abatement" means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

"Abatement date" means:

1. For an uncontested citation item, the later of:
 - The date in the citation for abatement of the violation;
 - The date approved by OSHA or established in litigation as a result of a petition for modification of the abatement date (PMA); or
 - The date established in a citation by an informal settlement agreement.

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2. For a contested citation item for which the employment appeal board has issued a final order affirming the violation, the later of:

- The date identified in the final order for abatement; or
- The date computed by adding the period allowed in the citation for abatement to the final order date;
- The date established by a formal settlement agreement.

“Affected employees” means those employees who are exposed to the hazard(s) identified as a violation(s) in a citation.

“Final order date” means:

1. For an uncontested citation item, the fifteenth working day after the employer’s receipt of the citation;
2. For a contested citation item:
 - The thirtieth day after the date on which a final order was entered by the employment appeal board or
 - The date on which a court issues a decision affirming the violation in a case in which a final order of employment appeal board has been stayed.

“Movable equipment” means a hand-held or non-hand-held machine or device, powered or unpowered, that is used to do work and is moved within or between work sites.

3.19(3) Abatement certification.

a. Within ten calendar days after the abatement date, the employer must certify to the division that each cited violation has been abated, except as provided in paragraph “b” of this subrule.

b. The employer is not required to certify abatement if the compliance safety and health officer during the on-site portion of the inspection:

- (1) Observes, within 24 hours after a violation is identified, that abatement has occurred; and
- (2) Notes in the citation that abatement has occurred.

c. The employer’s certification that abatement is complete must include, for each cited violation, in addition to the information required in 3.19(8), the date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement.

NOTE: Appendix A contains a sample abatement certification letter.

3.19(4) Abatement documentation.

a. The employer must submit to the division, along with the information on abatement certification required by subrule 3.19(3), paragraph “c,” documents demonstrating that abatement is complete for each willful or repeat violation and for any serious violation for which the division indicates in the citation that the abatement documentation is required.

b. Documents demonstrating that abatement is complete may include, but are not limited to, evidence of the purchase or repair of equipment, photographic or video evidence of abatement, or other written records.

3.19(5) Abatement plans.

a. The division may require an employer to submit an abatement plan for each cited violation (except an other-than-serious violation) when the time permitted for abatement is more than 90 calendar days. If an abatement plan is required, the citation must so indicate.

b. The employer must submit an abatement plan for each cited violation within 25 calendar days from the final order date when the citation indicates that such a plan is required. The abatement plan must identify the violation and the steps to be taken to achieve abatement, including a schedule for completing abatement and, where necessary, how employees will be protected from exposure to the violative condition in the interim until abatement is complete.

NOTE: Appendix B contains a sample abatement plan form.

3.19(6) Progress reports.

a. An employer who is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. The citation must indicate:

- (1) That periodic progress reports are required and the citation items for which they are required;
- (2) The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after submission of an abatement plan;
- (3) Whether additional progress reports are required; and
- (4) The date(s) on which additional progress reports must be submitted.

b. For each violation, the progress report must identify, in a single sentence if possible, the action taken to achieve abatement and the date the action was taken.

NOTE: Appendix B contains a sample progress report form.

3.19(7) Employee notification.

a. The employer must inform affected employees and their representative(s) about abatement activities covered by this rule by posting a copy of each document submitted to the division or a summary of the document near the place where the violation occurred.

b. Where posting does not effectively inform employees and their representatives about abatement activities (for example, for employers who have mobile work operations), the employer shall:

- (1) Post each document or a summary of the document in a location where it will be readily observable by affected employees and their representatives; or
- (2) Take other steps to communicate fully to affected employees and their representatives about abatement activities.

(3) The employer must inform employees and their representatives of their right to examine and copy all abatement documents submitted to the division.

c. An employee or an employee representative shall submit a request to examine and copy abatement documents within three working days of receiving notice that the documents have been submitted. The employer shall comply with an employee’s or employee representative’s request to examine and copy abatement documents within five working days of receiving the request.

d. The employer must ensure that notice to employees and employee representatives is provided at the same time or before the information is provided to the division and that abatement documents are:

- (1) Not altered, defaced, or covered by other material; and
- (2) Remain posted for three working days after submission to the division.

3.19(8) Transmitting abatement documents.

a. The employer must include, in each submission required by this rule, the following information:

1. The employer’s name and address;
2. The inspection number to which the submission relates;
3. The citation and item numbers to which the submission relates;
4. A statement that the information submitted is accurate; and
5. The signature of the employer or the employer’s authorized representative.

b. The date of postmark is the date of submission for mailed documents. For documents transmitted by other

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means, the date the division receives the document is the date of submission.

3.19(9) Movable equipment.

a. For serious, repeat, and willful violations involving movable equipment, the employer must attach a warning tag or a copy of the citation to the operating controls or to the cited component of equipment that is moved within the work site or between work sites. Attaching a copy of the citation to the equipment is deemed to meet the tagging requirement of this paragraph as well as the posting requirement of rule 875—3.11(88).

b. The employer must use a warning tag that properly warns employees about the nature of the violation involving the equipment and identifies the location of the citation issued.

NOTE: Appendix C (nonmandatory) contains a sample tag that employers may use to meet this requirement.

c. If the violation has not already been abated, a warning tag or copy of the citation must be attached to the equipment:

(1) For hand-held equipment, immediately after the employer receives the citation; or

(2) For non-hand-held equipment, prior to moving the equipment within or between work sites.

d. For the construction industry, a tag that is designed and used in accordance with 29 CFR 1926.20(b)(3) and 29 CFR 1926.200(h) is deemed by OSHA to meet the requirements of this rule when the information required by subrule 3.19(9), paragraph "b," is included on the tag.

e. The employer must ensure that the tag or copy of the citation attached to movable equipment is not altered, defaced, or covered by other material.

f. The employer must ensure that the tag or copy of the citation attached to movable equipment remains attached until:

(1) The violation has been abated and all abatement verification documents required by this regulation have been submitted to the division;

(2) The cited equipment has been permanently removed from service or is no longer within the employer's control; or

(3) The appeal board issues a final order vacating the citation.

ITEM 15. Adopt new rule 875—3.20(88) to read as follows:

875—3.20(88) Policy regarding employee rescue activities.

3.20(1) The labor commissioner or the commissioner's designee shall review the inspection report of the compliance safety and health officer. If, on the basis of the report, the labor commissioner or the commissioner's designee believes that the employer has violated a requirement of Iowa Code section 88.4 or any rule, the commissioner or the commissioner's designee shall issue to the employer either a citation or a notice of de minimis violations which has no direct or immediate relationship to safety or health. An appropriate citation or notice of de minimis violations shall be issued even though after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Any citation or notice of de minimis violations shall be issued with reasonable promptness after termination of the inspection. No citation may be issued under this rule after the expiration of six months following the occurrence of any alleged violation.

3.20(2) Any citation shall describe with particularity the nature of the alleged violation, including a reference to Iowa

Code chapter 88, or rule alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violation.

3.20(3) If a citation or notice of de minimis violations is issued for a violation alleged in a request for inspection under subrule 3.7(1) or a notification of violation under subrule 3.7(3), a copy of the citation or notice of de minimis violations shall also be sent to the employee or representative of employees who made such request or notification.

3.20(4) Every citation shall state that the issuance of a citation does not constitute a finding that a violation has occurred unless there is a failure to contest as provided for in Iowa Code chapter 88 or, if contested, unless the citation is affirmed by the appeal board.

3.20(5) No citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger unless:

a. The employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, and the employer fails to provide protection of the safety and health of the employee, including failing to provide appropriate training and rescue equipment; or

b. The employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, and the employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or

c. The employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as a workplace operation where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency situations, perform excavations, or perform construction over water; and such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual. Additionally, the employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

3.20(6) For purposes of this policy, the term "imminent danger" means the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated.

ITEM 16. Reserve rule 875—3.21(88).

ITEM 17. Adopt new rule 875—3.22(88,89B) as follows:

875—3.22(88,89B) Additional hazard communication training requirements.

3.22(1) Training format. The employer may present the training program to the employee in any format; however, the employer shall preserve a written summary and synopsis of the training, a cassette tape recording of an oral presentation, or a videotape recording of an audio-video presentation of the training relied upon by the employer for compliance with 29 CFR 1910.1200(h), and shall allow employees and their designated representatives access to the written synopsis, tape recording, or videotape recording.

3.22(2) Review by the division. The training program shall be available for review and approval upon inspection by the division. Upon request by the commissioner, the em-

LABOR SERVICES DIVISION[875](cont'd)

ployer shall make available the written synopsis, cassette tape recording, or videotape recording used or prepared by the employer. The commissioner may conduct an inspection to review an actual training program or review the employer's records of a training program.

ITEM 18. Amend renumbered rule 875—3.23(88) as follows:

Amend the definition of "Compliance safety and health officer" to read as follows:

"Compliance safety and health officer" means a person authorized by the labor commissioner of the department of employment services workforce development, division of labor services, to conduct inspections.

Adopt a new definition of "Division" as follows:

"Division" means the Iowa division of labor of the department of workforce development.

ITEM 19. Renumber rule 875—3.15(88) as 875—3.24(88).

ITEM 20. Adopt new appendices to 875—Chapter 3 as follows:

NOTE: Appendices A through C provide information and nonmandatory guidelines to assist employers and employees in complying with the appropriate requirements of rule 875—3.19(88).

Appendix A - Sample Abatement—Certification Letter

(Name), IOSH Administrator
Iowa Division of Labor Services
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

The hazard referenced in Inspection Number [insert 9-digit #] for violation identified as:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

Citation [insert #] and item [insert #] was corrected on [insert date] by:

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Appendix B - Sample Abatement Plan or Progress Report

(Name), IOSH Administrator
Iowa Division of Labor Services
1000 East Grand Avenue
Des Moines, IA 50319

[Company's Name]
[Company's Address]

Check one:

Abatement Plan []

Progress Report []

Inspection Number [insert 9-digit #] _____

Page _____ of _____

Citation Number(s)* _____

Item Number(s)* _____

Action	Proposed Completion Date (for abatement plans only)	Completion Date (for progress reports only)
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____
4. _____	_____	_____
5. _____	_____	_____
6. _____	_____	_____

- 1. _____
- 2. _____
- 3. _____
- 4. _____
- 5. _____
- 6. _____

Date required for final abatement: _____

I attest that the information contained in this document is accurate.

Signature

Typed or Printed Name

Name of primary point of contact for questions:

[optional] _____

Telephone number: _____

* Abatement plans or progress reports for more than one citation item may be combined in a single abatement plan or progress report if the abatement actions, proposed completion dates, and actual completion dates (for progress reports only) are the same for each of the citation items.

Appendix C Tag

WARNING

EQUIPMENT HAZARD

CITED BY OSHA

EQUIPMENT CITED:

HAZARD CITED:

FOR DETAILED INFORMATION
SEE OSHA CITATION POSTED AT:

Iowa Division of Labor Services
Occupational Safety and Health Administration

Background color - Orange

Message color - Black

ITEM 21. Rescind and reserve 875—Chapter 120.

ARC 8562A**PERSONNEL DEPARTMENT[581]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby gives Notice of Intended Action to amend Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

The majority of these amendments are adopted to implement statutory changes enacted in 1998 Iowa Acts, chapter 1183. Additional amendments are adopted to clarify IPERS' policies and administrative practices and to correct scrivener's errors.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 5, 1999. Such written materials should be directed to IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117.

There will be a public hearing on January 5, 1999, at 9 a.m. (local Iowa time) at IPERS, 600 East Court Avenue, Des Moines, Iowa, at which time persons with suggestions or comments will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments were simultaneously Adopted and Filed Emergency and are published herein as **ARC 8563A**. The content of that filing is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 97B as amended by 1998 Iowa Acts, chapter 1183.

ARC 8557A**PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455G.4(3), 455G.6(15), 455G.9 and 455G.21, the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (Board) hereby amends Chapter 11, "Remedial or Insurance Claims," Iowa Administrative Code.

Chapter 11 describes the guidelines for remedial or insurance claims. Remedial claims address releases from UST systems which occurred prior to October 26, 1990. As part of the corrective action associated with these past releases, UST systems needed to be removed. In addition, as sites were upgraded, many of these systems needed to be removed. Therefore, the remedial account paid for tank and

pipng removal and other costs associated with the over excavation around these tank removals.

All sites must be fully upgraded on or before December 22, 1998. If a site is eligible for remedial benefits, the system associated with the release will either be upgraded or removed on or before December 22, 1998. Therefore, there should no longer be a need to remove UST tanks and piping to address a release which occurred prior to October 26, 1990. Any such removals after December 22, 1998, will be for replacement of upgraded systems and, as such, are a capital improvement to the property and not a part of the corrective action associated with the past release.

It is anticipated that these amendments will become effective March 17, 1999. Therefore, the limitation on upgrade benefits will coincide with the effective date.

These amendments will limit benefits associated with tank closure and upgrade for activities which occur after the federal upgrade deadline and the effective date of these amendments, March 17, 1999. These changes will also impact the available upgrade benefits which were created to assist owners to meet the upgrade deadline. With the passing of that deadline, these benefits are no longer required. The Board's records indicate that less than 1 percent of all sites eligible for benefits have not upgraded to date. It is anticipated that all of these sites will be fully upgraded or permanently closed on or before the December 22, 1998, deadline. Therefore, there should be minimal impact as a result of these amendments.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 5, 1999. Such written comments should be directed to the Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, 1000 Illinois Street, Suite B, Des Moines, Iowa 50314.

Persons who want to orally convey their views should contact Patrick Rounds, Administrator, Iowa Comprehensive Petroleum Underground Storage Tank Fund Board, at (515)284-1616, during regular business hours.

There will be a public hearing on January 5, 1999, at 10 a.m. in the Conference Room of the Administrator's Office, 1000 Illinois Street, Suite B, Des Moines, Iowa. Persons may present their views at this public hearing either orally or in writing.

These amendments will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies and entities which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

These amendments are intended to implement Iowa Code sections 455G.9 and 455G.21.

The following amendments are proposed.

ITEM 1. Amend subrule 11.1(3), paragraph "f," as follows:

f. Remedial and retroactive claims may be paid monthly and will include all approved expenses, including tank and piping removal *if the tank and piping removal occurs on or before March 17, 1999*, and other costs as provided in Iowa Code chapter 455G. Costs of replacement materials excavated shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets department of natural resources requirements.

ITEM 2. Amend subrule 11.4(4) as follows:

11.4(4) Upgrade benefit payments *under subrule 11.4(6)* shall be made upon evidence that the upgrade met standards in 567—Chapter 135 and the department registration Form 148 has been completed and mailed to the department and

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591](cont'd)

the administrator. These upgrade benefits shall be paid only if all requirements of 591—Chapter 15 have been met. If a site does not comply with the applicable provisions of 591—Chapter 15, the site is not eligible for these upgrade benefits unless installation or upgrade occurred prior to October 26, 1990. In that event, the individual reimbursement request will be reviewed to determine if other information is necessary before upgrade benefit payment can be made. In addition, the completed work must be within the budget previously approved by the administrator pursuant to Iowa Code section 455G.12A.

ITEM 3. Amend subrule 11.4(6) as follows:

11.4(6) Tank and piping upgrades and replacements eligible for upgrade benefits.

a. The following tank and piping upgrades or replacements are eligible for upgrade benefits *if completed on or before March 17, 1999*:

(1) to (4) No change.

b. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, *and on or before March 17, 1999*, on sites which are classified as being environmentally sensitive:

(1) and (2) No change.

c. The following tank and piping upgrades and replacements are eligible for upgrade benefits when the tank upgrade or replacement occurs on or after March 25, 1992, *and on or before March 17, 1999*, on sites which are not classified as being environmentally sensitive:

(1) and (2) No change.

ARC 8555A

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to amend Chapter 5, "Applications for Track Licenses and Racing Dates," Chapter 10, "Thoroughbred Racing," Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," Chapter 21, "Criteria for Granting an Excursion Boat and Racetrack Enclosure Gaming License," and Chapter 25, "Riverboat Operation," Iowa Administrative Code.

Items 1 and 6 prohibit applicants or licensees from promising anything of value with the intent to influence the action or decision of an individual.

Items 2 and 9 require a licensee that operates gambling games to adopt and implement policies and procedures relating to the gambling treatment program.

Item 3 requires a minimum of two outriders during each race of a performance.

Item 4 makes it each occupational licensee's responsibility and continuing duty to follow and comply with racetrack policies as published.

Item 5 allows the stewards the discretion to declare any horse precluded from having a fair start to be declared a non-starter.

Items 7 and 8 change the catchwords from "Promote gaming industry" to "Gaming integrity" and remove the "promote the gaming industry" language.

Any person may make written suggestions or comments on the proposed amendments on or before January 5, 1999. Written material should be directed to the Racing and Gaming Commission, 717 E. Court Avenue, 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 January 5, 1999, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Amend subrule 5.7(1), introductory paragraph, as follows:

5.7(1) Duties and obligations of applicants and licensees. No person shall give *or promise to give* anything of value with the intent to influence the action or decision of an individual, on any matter brought before that individual acting in the individual's official capacity, including but not limited to:

ITEM 2. Amend rule 491—5.15(99D) by adopting the following new subrule and renumbering existing subrules 5.15(10) through 5.15(12) as 5.15(11) through 5.15(13):

5.15(10) Gambling treatment program.

a. The holder of a license to operate gambling games within a racetrack enclosure shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in its racing program and a substantial number of its advertisements information on the availability of the gambling treatment program.

ITEM 3. Amend rule 491—5.16(99D) by adopting the following new subrule and renumbering existing subrule 5.16(26) as 5.16(27):

5.16(26) Outriders. During each race of a performance, the licensee shall provide a minimum of two outriders.

ITEM 4. Amend subrule 10.2(6), paragraph "a," by adopting the following new subparagraph:

(7) Racetrack policies. It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with the racetrack policies as published

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

in literature distributed by the racetrack or posted in a conspicuous location.

ITEM 5. Amend subrule 10.2(6), paragraph "c," by adopting the following new subparagraph:

(6) At the discretion of the stewards, any horse(s) precluded from having a fair start may be declared a nonstarter, and any wagers involving said horse(s) may be ordered refunded.

ITEM 6. Amend subrule 20.15(1), introductory paragraph, as follows:

20.15(1) Duties and obligations of applicants and licensees. No person shall give or promise to give anything of value with the intent to influence the action or decision of an individual on any matter brought before that individual acting in the individual's official capacity including but not limited to:

ITEM 7. Amend subrule 21.10(12) as follows:

21.10(12) ~~Promote gaming industry~~ Gaming integrity. The commission will consider whether the proposed operation would ~~serve to promote the gaming industry in Iowa and provide~~ ensure high gaming integrity in Iowa.

ITEM 8. Amend subrule 21.13(4) as follows:

21.13(4) ~~Promote gaming industry~~ Gaming integrity. The commission will consider whether the proposed operation would ~~serve to promote the gaming industry in Iowa and provide~~ ensure high gaming integrity in Iowa.

ITEM 9. Amend rule 491—25.20(99F) by adopting the following new subrule:

25.20(9) Gambling treatment program.

a. The holder of a license to operate gambling games within an excursion gambling boat shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include in a substantial number of its advertisements information on the availability of the gambling treatment program.

ARC 8572A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of 1998 Iowa Acts, chapter 1075, section 4, the Farm-to-Market Review Board hereby gives

Notice of Intended Action to adopt Chapter 101, "Farm-to-Market Review Board," Iowa Administrative Code.

The Farm-to-Market Review Board was created by 1998 Iowa Acts, chapter 1075, section 3. The Farm-to-Market Review Board is responsible for making final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

1998 Iowa Acts, chapter 1075, section 4, requires the Farm-to-Market Review Board to adopt procedural rules for modifications to the existing farm-to-market system and designation of farm-to-market routes on new alignment. These rules implement this rule-making requirement.

Any person or agency may submit written comments concerning these proposed rules. The comments shall be sent to Mark Nahra, P.E., County Engineer—Administration, Linn County, 1888 County Home Road, Marion, Iowa 52302. To be considered, comments must be received no later than January 6, 1999.

These rules are intended to implement 1998 Iowa Acts, chapter 1075, sections 3 and 4.

The following new chapter is proposed.

CHAPTER 101 FARM-TO-MARKET REVIEW BOARD

761—101.1(306) Purpose. The purpose of these procedural rules is to formalize the process by which the farm-to-market review board, created by 1998 Iowa Acts, chapter 1075, section 3, will administer its duties.

101.1(1) 1998 Iowa Acts, chapter 1075, section 3, requires the farm-to-market review board to make final administrative decisions based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.1(2) 1998 Iowa Acts, chapter 1075, section 4, requires the farm-to-market review board to adopt procedural rules for modifications to the existing farm-to-market road system and designation of farm-to-market routes on new alignment. These rules implement this requirement.

101.1(3) 1998 Iowa Acts, chapter 1075, section 2, states that the farm-to-market road system shall be a continuous, interconnected system and that provision shall be made for continuity by the designation of extensions within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas.

761—101.2(306) Definitions.

"Area service roads" or "local roads" or "local road system" means those secondary roads that are not a part of the farm-to-market road system.

"Board" means the farm-to-market review board.

"Executive board" means the Iowa county engineers association executive board.

"Farm-to-market extensions" means extensions of the farm-to-market road system within municipalities, state parks, state institutions, other state lands, and county parks and conservation areas. The mileage of these extensions of the system shall be included in the total mileage of the farm-to-market road system.

"Farm-to-market roads" or "farm-to-market road system" means those county jurisdiction intracounty and intercounty roads which serve principal traffic-generating areas and connect such areas to other farm-to-market roads and primary roads. The farm-to-market road system includes those county jurisdiction roads providing service for short-distance intracounty and intercounty traffic or providing

TRANSPORTATION DEPARTMENT[761](cont'd)

connections between farm-to-market and area service roads, and includes those secondary roads which are federal aid eligible. The farm-to-market road system shall not exceed 35,000 miles.

“President” means the president of the Iowa county engineers association.

761—101.3(306) Composition and membership of the farm-to-market review board.

101.3(1) The farm-to-market review board shall be composed of 12 county engineers selected by the Iowa county engineers association. Two members shall be selected from each district to serve staggered terms. After the first complete term rotation as shown below, the members shall serve six-year terms. Rotations shall be staggered so that no more than one-sixth of the membership is rotated off the board in any one year. The rotation of board members shall further provide that two members from one district will not be rotated off the board in the same year, and that their rotations will be varied by three years. Initial board rotation shall be as follows and shall be extended in future years in the same pattern:

<u>Year</u>	<u>Rotation</u>
2000	District 1 Representative A District 4 Representative A
2001	District 2 Representative A District 5 Representative A
2002	District 3 Representative A District 6 Representative A
2003	District 1 Representative B District 4 Representative B
2004	District 2 Representative B District 5 Representative B
2005	District 3 Representative B District 6 Representative B

101.3(2) Members shall be nominated by their districts and approved by the executive board. A county engineer may serve multiple, consecutive terms if so nominated by the county engineer’s district. If a county engineer is unable to complete a term for any reason, the president shall select another county engineer within the district to serve the balance of the term.

101.3(3) The farm-to-market review board shall select from its membership a chairperson and a vice-chairperson to serve one-year terms. The chairperson serves at the pleasure of the board and may be elected to multiple terms as deemed appropriate by the board. The vice-chairperson shall chair a meeting in the absence of the chairperson.

761—101.4(306) Collection of system modification requests and frequency of meetings.

101.4(1) The department of transportation will collect applications for modifications to the farm-to-market road system. The board chairperson shall schedule meetings of the board. In general, the farm-to-market review board shall meet in conjunction with statewide meetings of the Iowa state association of counties and Iowa county engineers association to review accumulated applications for farm-to-market road system modifications. Applications must be filed no less than 30 days prior to each scheduled board meeting. Additional board meetings shall be called as determined by the chairperson.

101.4(2) The farm-to-market review board is required to follow the provisions of Iowa Code chapter 21 with regard to open meetings. The chairperson shall post a meeting agenda on the “Service Bureau Bulletin Board” and send copies of the agenda to all counties.

101.4(3) Minutes of each meeting shall be kept; the chairperson shall be responsible for the minutes. Meetings may be tape recorded to facilitate the preparation of meeting minutes, but any tapes made shall not be retained after the minutes have been completed.

761—101.5(306) Procedure for requesting modifications to the farm-to-market road system. To apply for a modification to the farm-to-market road system, a county must file an application through the department of transportation.

101.5(1) The application must include the following:

- a. A copy of a resolution of the county board of supervisors requesting the modification to the existing farm-to-market road system. Farm-to-market modifications may include proposed roads, redesignation of area service roads, or transfers of jurisdiction.
- b. A report of the county engineer explaining and justifying the addition of new mileage to the farm-to-market road system or the change in the route or farm-to-market classification proposed by the county.

101.5(2) In the case of intercounty routes, joint applications may be filed. Resolutions shall be required of each county.

761—101.6(306) Review criteria for determining eligibility for inclusion of additional roads into the farm-to-market road system.

101.6(1) The farm-to-market review board shall make final administrative determinations based on sound farm-to-market road system designation principles for all modifications relative to the farm-to-market road system.

101.6(2) The board shall consider the following factors in making decisions to modify the farm-to-market road system:

- a. Intracounty and intercounty continuity of systems.
- b. Properly integrated systems.
- c. Existing and potential traffic.
- d. Land use.
- e. Location of the route.
- f. Equitable distribution of farm-to-market mileage.

761—101.7(306) Voting and approval of requested modifications. This rule defines the number of board members necessary to constitute a quorum and the number of votes required to approve a requested modification to the farm-to-market road system. Each member is a voting member and is eligible to vote at every meeting at which that member is in attendance. Attendance may include members being present at the meeting through a conference telephone call, Iowa communications network connection, or other electronic means deemed appropriate by the chairperson.

101.7(1) Determination of a quorum. A minimum of seven board members is required for a quorum. If a quorum is not present at a meeting, the meeting shall be rescheduled.

101.7(2) Number of votes needed to approve or deny a modification. For a requested modification to the farm-to-market road system to be approved, it must receive a minimum of seven affirmative votes; in other words, a majority of the entire board. A motion to deny a requested modification need only receive six votes for the denial to be approved.

761—101.8(306) Report of board decision to applicant county. Within 30 calendar days after a board meeting, the chairperson shall send a letter to each county whose request

TRANSPORTATION DEPARTMENT[761](cont'd)

was acted upon by the board at the meeting. The letter shall apprise each applicant of the decision of the farm-to-market review board, briefly explain the reasons for the board's decision, and explain the reapplication and judicial review processes.

761—101.9(306) Reapplication for modification. A county may reapply for a modification to the farm-to-market road system if its initial request is denied. The county must again follow all provisions for requesting a modification and should be prepared to present additional information in support of the requested change. Any requested system modification that receives two denials may not be resubmitted for consideration for a minimum of three years.

761—101.10(306) Judicial review. Any county that is aggrieved or adversely affected by a decision of the farm-to-market review board may seek judicial review of such agency action under the provisions of Iowa Code section 17A.19.

761—101.11(306) Adoption and modification of rules.

101.11(1) These procedural rules were adopted by the farm-to-market review board in accordance with Iowa Code chapter 17A.

101.11(2) Legislative action, board experience or other factors may necessitate changes to these rules. The chairperson shall direct the board to review these rules annually. Board members may recommend changes to these rules. Adoption of recommended changes is at the discretion of the board and shall be handled in accordance with Iowa Code chapter 17A.

761—101.12(306) Severability clause. If any section, provision, or part of these rules is adjudged invalid or unconstitutional, such adjudication shall not affect the validity of these rules as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional.

These rules are intended to implement 1998 Iowa Acts, chapter 1075, sections 3 and 4.

ARC 8571A**WORKFORCE DEVELOPMENT
DEPARTMENT[871]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to rescind 345—Chapter 1, "Administration"; to adopt Chapter 21, "Unemployment Insurance Services Division"; and to amend Chapter 23, "Employer's Contribution and Charges," Chapter 24, "Claims and Benefits," and Chapter 25, "Benefit Payment Control," Iowa Administrative Code.

Chapter 1 of Job Service Division[345] is rescinded due to Workforce Development Department reorganization.

Chapter 21 describes the organizational structure of Unemployment Insurance Services.

Subrule 22.1(2) is amended by adding paragraph "h" which describes the work site reporting which has now been moved to these rules.

Subrule 23.10(2), paragraph "a," is rescinded since the requirement for a bond was deleted from the law.

Subrule 23.52(6) is amended to reference rule 26.5(17A, 96) and "appeals bureau" is changed to "administrative law judge."

Subrules 23.54(1) and 23.54(2) are amended and subrule 23.54(3) is rescinded and reserved to adopt a changed definition of when acquiescence applies pursuant to a suggestion by the state ombudsman's office.

Subrules 23.70(3) and 23.70(6) are amended and subrules 23.70(4), 23.70(5) and 23.70(7) to 23.70(9) are rescinded and reserved because the requirement for bond was removed from the law.

Subrule 24.1(4) is rescinded and reserved since area claims offices are now called Workforce Development Centers due to reorganization.

Subrules 24.1(8), 24.1(9), 24.1(54) to 24.1(56) are rescinded and reserved since application and claim record cards are no longer used.

Subrule 24.4(1) is amended to change the name of Form 70-6200 to "Facts About Unemployment Insurance."

Subrule 24.8(2), paragraph "d," subparagraph (2), is rescinded to reduce paperwork for employers.

Subrule 24.23(24) is amended to delete obsolete wording.

Subrule 24.23(41) is amended to correct the Iowa Code citation.

Subrule 24.26(14) is added to provide domestic and workplace violence within the voluntary quit provision.

Subrule 24.26(15) is added to reflect recent law changes defining separations from temporary employment firms.

Subrule 24.39(1), paragraphs "a," "b," "c," and "f," are rescinded and paragraph "c" is added to reduce paperwork. Information is already in the possession of the department and additional questions will be asked verbally.

Subrule 24.58(6) is added to reflect recent legislation.

Subrule 25.12(2) is amended to change wording from "section" to "bureau."

Subrule 25.12(3) is added to specify that an employer may submit wages for crossmatch using automated procedures.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m., January 5, 1999, to Reynel Dohse, Department of Workforce Development, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m., January 5, 1999, at the above address. The proposed amendments are subject to revision after the Division considers all written and oral presentations. Persons who want to convey their views orally should contact Reynel Dohse at (515)281-4986 or at the above address.

These amendments are intended to implement Iowa Code sections 84A.1, 96.4(6)"a," 96.5(1), 96.6(2), 96.7(8), 96.10, 96.12 and 96.14 and Federal VCX Law (5 U.S.C. 8525).

The following amendments are proposed.

ITEM 1. Rescind 345—Chapter 1.

ITEM 2. Adopt the following new 871—Chapter 21:

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

CHAPTER 21
UNEMPLOYMENT INSURANCE
SERVICES DIVISION

871—21.1(96) Unemployment insurance services division.

21.1(1) The primary responsibility of this division is to administer the provisions of the Iowa employment security law and related federal programs in accordance with pertinent laws, regulations, and policies. Attorneys who report to the administrator of the unemployment insurance services division perform the legal services for the division pursuant to Iowa Code section 96.17 which empowers the division to employ attorneys to represent it and give advice on all matters coming before it in conjunction with the administration of Iowa Code chapter 96. The division administers the payment of job insurance benefits to eligible individuals, determines which employers are subject to the state and federal laws enacted in this area, supervises the collection of taxes from these employers, and oversees a program to control the quality of benefit payment and revenue collection. These functions are performed by the following bureaus:

a. Claims case bureau. The claims case bureau determines the eligibility of individuals claiming unemployment insurance. In addition to the Iowa unemployment insurance benefits, the bureau also processes unemployment insurance for Federal Employees Compensation Act (FECA), Unemployment Insurance for Ex-service Members (UCX), claims for Trade Readjustment Act and Expansion Act (TRA and TEA), Voluntary Shared Work (VSW), and Disaster Unemployment Assistance (DUA). It is also responsible for payments of other special federal unemployment insurance benefits as agreed to by the United States Department of Labor and the state of Iowa.

(1) Claims resolution and consultation section. The claims resolution and consultation section is responsible for screening all employer protests and issuing special investigation reports to the local workforce development centers. This section investigates all labor dispute protests and issues appropriate decisions. This section determines individuals' eligibility on disputed claims for unemployment insurance benefits which are not adjudicated at the local office level. This section reviews decisions that determine which employers will receive charges on claims for unemployment insurance benefits and investigates claims for missing wages. The section also responds to communications involving technical matters related to unemployment insurance and corrects necessary records and database due to subsequent appeal decisions which reverse the prior decision issued on a claim.

(2) Special claims section. The special claims section is responsible for processing claims for FECA, UCX, TRA, VSW, DUA, and any other federal unemployment insurance programs. This section determines eligibility, computes and authorizes payments due, maintains needed records, and makes adjustments or redeterminations as applicable. This section is also responsible for processing initial interstate claims, assisting claimants in calling in their continued claims for payment, notifying employer of claim filing, processing overpayments and underpayments, adjudicating issues, processing interstate appeals, and processing combined wage claims.

b. Benefit control bureau. The benefit control bureau is responsible for overseeing the determination of eligibility for individuals claiming unemployment insurance benefits, processing and adjusting benefit payments, document con-

trol, and division support. The functions are performed by two sections.

(1) Information control section. The information control section is responsible for the control and conversion of all paper documents compiled during the normal course of business for unemployment insurance claims and taxes. The section converts paper documents to imaged objects or microfilm copies. The section assigns document control information to each paper document which provides automated electronic workflow routing, document retention criteria, document locating information, and computer updates. The section is also responsible for the retrieval of micrographic documents for internal and external customers. The section prepares documents and computer records for release to the public under subpoena or waiver provisions and collects record processing fees. The section is responsible for the child support intercept program in which unemployment insurance benefits are withheld and paid to the child support recovery unit. The section is responsible for the voluntary income tax withholding program in which state and federal taxes are withheld from unemployment insurance benefits. The section is responsible for reporting tax withholdings and taxable unemployment insurance benefits to the Internal Revenue Service, Iowa Department of Revenue and Finance, and claimants.

(2) Payment control section. The payment control section is responsible for determining eligibility of individuals for unemployment insurance benefits. The section performs fact-finding interviews with claimants and employers to resolve issues discovered by recording the responses the claimant provides to questions asked in the weekly continued claim certification process. The section allows or denies benefits based on Iowa employment security law and Iowa administrative rules and issues a determination. The section computes and issues overpayment determinations and underpayment supplemental benefit payments due to misreported earnings or eligibility disqualifications. The section is responsible for all overpayment billing activity which results in an overpayment setup or refund, overpayment decision letter, or overpayment billing notice. The section is responsible for overpayment recovery programs which include withholding of Iowa income tax refunds, Iowa Lottery prizes, Iowa vendor payments, and the Interstate Reciprocal Overpayment Recovery Arrangement. The section is responsible for the issuance of duplicate benefit payments for lost, stolen, outdated, or returned payments. The section authorizes and issues replacement warrants or direct deposit transactions. The section verifies financial institution corrections of direct deposit routing and account numbers and updates the database records.

c. Tax bureau. The tax bureau is responsible for the maintenance and control of all records of unemployment insurance tax paid by liable employers in the state of Iowa. Taxes collected are deposited in a fund to be subsequently used for benefit payments. This section maintains financial records on employers; assigns rates each year to employers; makes all necessary adjustments to ensure proper charging to employers of benefits chargeable to them; maintains records of employer overpayments and refunds; and maintains the necessary contacts with employers' accountants, attorneys, and the general public to ensure the proper and timely submission of all the required reports to the division of unemployment insurance. The collection section is responsible for the collection of delinquent tax contributions, benefit reimbursements, and unpaid interest and penalty assessments from all Iowa employers who file job insurance reports. Staff instigates routine legal actions such as the filing of

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

liens, garnishments, and bankruptcies. Employers are contacted by mail, telephone, or personally to initiate the collection process. The deposition section thoroughly reviews contribution reports against payroll reports for matching totals and verifies the amount of the check against the employer's report. The section is responsible for depositing all money received for contribution reports, benefit reimbursements, and interest and penalties with the state treasurer's office. The information on the contribution reports is key-punched and the proof sheets are checked to see that they have been correctly punched. The adjustment/chargeback section assigns contribution rates to employers, handles the accounting work on partial changes of ownership, adjusts the amounts owed by employers, and audits the taxable wages reported by the employer in accordance with state and federal requirements. The chargeback unit removes erroneous charges when employers are charged in error. This unit is also responsible for corrections on employee charge notices which could affect employee contribution tax rates.

d. Field audit bureaus. These bureaus are responsible to contact Iowa and out-of-state employers who do business in Iowa to establish taxpayers' liability under the law; explain the law's provisions; secure information and make determinations pertaining to new accounts, successorships and terminating tax liability; collect delinquent contributions; give information and assistance to ensure compliance in the preparation of tax reports and in securing refunds of overpaid taxes; conduct investigations on FUTA discrepancy problems, contractor registration issues, business closings, and claimant requests for omitted wage credits; determine employer/employee and independent contractor relationship issues; assist in fraud investigations; conduct payroll and financial audits; and appear as an expert witness at employer liability hearings. The bureaus also provide services to other states who request assistance in their unemployment insurance enforcement with Iowa-based employers who conduct business in their states. The bureaus also assign all field audit work. Information is entered into the automated system which generates materials to be utilized by the field audit staff in conducting an employer inquiry and audit.

e. Investigation and recovery bureau. The investigation and recovery bureau is responsible for aggressive action to prevent, detect, investigate and penalize fraudulent actions on the part of employing units and individuals claiming unemployment insurance benefits. The bureau also recovers overpayments and files liens and garnishments to assist with recovery of overpayments. The bureau verifies that aliens are entitled to unemployment insurance and investigates and disqualifies those that are not eligible. The bureau conducts the fictitious employer detection program to discover employers set up for the purpose of fraudulent activities. The bureau also prosecutes violations of the Iowa employment security law including fraudulent receipt of unemployment insurance benefits in conjunction with each county attorney in Iowa. The bureau also investigates and determines whether an unemployment insurance warrant has been forged and whether it should be reissued.

f. Quality control bureau. The quality control bureau is responsible for the collection and analysis of data pertaining to both the accuracy of payments as well as the effectiveness of revenue collection processes for the unemployment insurance program. Quality control reports directly to the division administrator as it works to support the development and execution of corrective action plans for the improvement of the program. In addition, quality control is responsible for validation of the unemployment insurance data reports, identification and analysis of risk factors which could threaten

the unemployment insurance program, and maintenance of the data processing capabilities to store and transmit various agency-required reports to the federal government.

ITEM 3. Amend subrule 22.1(2) by adopting the following new paragraph "h":

h. The physical work site at which each employee worked during each pay period which includes the twelfth of each month. If an employee worked at more than one work site, the work site at which the majority of the work was performed should be the one of record.

ITEM 4. Amend subrule 23.10(2) by rescinding existing paragraph "a" and relettering existing paragraphs "b" to "d" as "a" to "c" as follows:

~~a. Forfeiture of bond.~~

b a. Issuance of Notice of Assessment and Lien, Form 68-0043.

e b. Issuance of Notice of Jeopardy Assessment, Form 68-0138.

d c. Any other actions as prescribed by the law or these rules including collection by distress warrant.

ITEM 5. Amend subrule 23.52(6) as follows:

23.52(6) Upon receipt of a request for hearing, the tax section will ask the ~~appeals bureau~~ *administrative law judge* to schedule a hearing for the employer. A copy of the request will be mailed to the employer. A copy of the file containing all relevant information regarding the issue of the appeal shall be forwarded to the ~~appeals bureau~~ *administrative law judge*. Documents that may be sent to the ~~appeals bureau~~ *administrative law judge* include a copy of the disputed decision, the employer's original letter of appeal, all relevant correspondence from the department, and the employer's letter requesting a hearing. All employer liability appeals shall be heard by an administrative law judge of the department and shall be scheduled for hearing at the earliest possible date. Procedures for employer liability hearings are set out in rule 871—26.7 5(17A,96).

ITEM 6. Amend rule 871—23.54(96) as follows:

871—23.54(96) Payment of disputed assessments.

23.54(1) Payment of a disputed assessment is held to be an acquiescence in the assessment ~~and it waives any further right of appeal. It is immaterial whether the assessment is paid before, at the time of, or after the taking of the appeal only when a timely appeal is not filed.~~

23.54(2) An employing unit which has appealed a determination of liability, or a payment of contributions due, shall file Form 65-5300, Employer's Contribution and Payroll Report, for all quarters for which the employer is held liable *regardless of any appeal*. Such reports are to be marked by the employer ~~filed under protest and submitted without payment "Appeal Filed" and submitted with full payment of the disputed assessment, without payment or with a payment in the amount estimated to be owed by the employing unit.~~

~~23.54(3) The department may waive acquiescence and allow payment of the disputed tax. The department may in its discretion waive acquiescence for good cause. The employer should make application for the waiver by letter directed to the supervisor of the tax section.~~

ITEM 7. Rescind and reserve subrules 23.70(4), 23.70(5), and 23.70(7) to 23.70(9), and amend subrules 23.70(3) and 23.70(6) as follows:

23.70(3) All requests by nonprofit organizations wishing to be considered for reimbursable status shall be filed on Form 68-0463 and that form, along with the organization's

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

501(c)(3) Internal Revenue Service letter of exemption, except as otherwise provided in subrule 23.70(2), shall be directed to the attention of the field audit unit. The request for reimbursable status will be examined by a field auditor or other authorized representative and subsequently forwarded to the supervisor of the tax section for a review of bond or other security approval before final submission of all forms to the department of approval.

23.70(6) An organization not possessing a 501(c)(3) nonprofit tax exemption at the time its election is submitted shall be granted reimbursable status provided that the exemption is obtained and a copy is filed with the department within 180 days of the date the election is submitted. ~~The organization shall post a bond or other surety as provided by law and in these rules.~~ Should the organization fail to obtain an exemption within 180 days, the election shall be invalid and the organization shall be required to pay contributions upon all taxable wages paid during the period covered by the invalid election at the contribution rate it would have had if the invalid election had not been made. A new election may not be made by the organization until it has obtained a 501(c)(3) nonprofit tax exemption and has filed a new election. Such new election shall not be retroactive to cover the period of the invalid election. Benefits reimbursed during the invalid election shall be used to offset the contributions due and any excess shall be refunded to the organization.

ITEM 8. Rescind and reserve subrules 24.1(4), 24.1(8), 24.1(9), and 24.1(54) to 24.1(56).

ITEM 9. Amend subrule 24.4(1) as follows:

24.4(1) Intrastate benefits. A benefit rights interview is given by a workforce development representative to each individual filing an initial claim for benefits to review with the individual those provisions in the law and rules which govern the individual's monetary eligibility, rights and responsibilities under Iowa's unemployment insurance program. The benefit rights interview may be given by an individual or group type interview. Each individual's signature on Form 60-0330, Application for Job Placement Assistance and/or Job Insurance, confirms that the individual received the Form 70-6200, ~~Facts for Workers~~ *Facts About Unemployment Insurance*, and understood the information contained in its Claimant Confirmation Statement, which explains the individual's rights, benefits, and responsibilities under Iowa's unemployment insurance program.

ITEM 10. Rescind and reserve subrule 24.8(2), paragraph "d," subparagraph (2).

ITEM 11. Amend subrule 24.23(24) as follows:

24.23(24) When a claimant is receiving from the Veterans Administration an educational assistance allowance under the War Orphans Educational Assistance Act of 1956, which is disqualifying under the Social Security Act, ~~a protest may be filed in the workforce development center office to be sent to the Veterans Administration for reconsideration of the findings provided it is done within ten days from the mailing date of the disqualification notice from the department.~~

ITEM 12. Amend the implementation sentence at the end of rule 871—24.23(96) as follows:

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(9)(38)"c" and 96.29.

ITEM 13. Amend rule 871—24.26(96) by adopting the following new subrules:

24.26(14) The individual left employment due to workplace or domestic violence perpetrated against the individual at, around or in connection with the work. The individual must make all reasonable efforts to continue in the employment and be forced to quit in order to protect the individual's own safety.

24.26(15) Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer, or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

ITEM 14. Amend subrule 24.39(1) as follows:

24.39(1) Any claimant for benefits who desires to receive benefits while attending school for training or retraining purposes shall make a written application to the department setting out the following:

~~a. Claimant's most recent employer and employment.~~

~~b. The reasons for claimant's unemployment.~~

~~c. The proposed course of training or retraining.~~

d. The educational establishment at which the claimant would receive training.

e. The estimated time required for such training.

~~f. The type of jobs for which the claimant will qualify at completion of such training.~~

~~c. The occupation which the training is allowing the claimant to maintain or pursue.~~

ITEM 15. Amend rule 871—24.58(96) by adopting the following new subrule:

24.58(6) If the employer provides as part of the plan a training program that will provide a substantive increase in the workplace and employability skills of the employee so as to reduce the potential for future periods of unemployment, the department shall consider the employee to be attending department-approved training and shall relieve the employer of charges for benefits paid to the individual attending training under the plan.

ITEM 16. Amend subrule 25.12(2) as follows:

25.12(2) The form, upon completion ~~and return by the employer is sent to the investigation and recovery section, is reviewed for errors and discrepancies bureau for entering in the Iowa Workforce Development database system.~~ If the form is not completed ~~correctly properly~~, it is forwarded sent to the data processing department for the entering of information into the computer. If the form is not completed correctly it is returned to the employer for corrections, or an investigator will call the employing unit for verification of in-

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~~formation employing unit for correct information and then returned for processing. Any potential cases of conflict generated by the computer program will result in the production of Form 65-5321, Wage Cross Match Audit Form, and Form 65-5332, Notice to Claimant of an Alleged Overpayment an investigation assignment and investigation packet. Claimants will be notified of a fact-finding interview by means of Form 65-5332 (Preliminary Audit Notice-214-B) and given an opportunity to respond. If it is determined that an overpayment has occurred, the investigator will prepare Form 68-0031 on which the amount, weeks, type, and reason for the overpayment are identified. Claimants are notified of the determination on Form 65-5323.~~

ITEM 17. Amend rule 871—25.12(96) by adopting the following **new** subrule:

25.12(3) An employer may choose to participate in the automated crossmatch procedure by following the magnetic media submission guidelines.

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:

November 1, 1997 — November 30, 1997	8.25%
December 1, 1997 — December 31, 1997	8.00%
January 1, 1998 — January 31, 1998	8.00%
February 1, 1998 — February 28, 1998	7.75%
March 1, 1998 — March 31, 1998	7.50%
April 1, 1998 — April 30, 1998	7.50%
May 1, 1998 — May 31, 1998	7.75%
June 1, 1998 — June 30, 1998	7.75%
July 1, 1998 — July 31, 1998	7.75%
August 1, 1998 — August 31, 1998	7.50%
September 1, 1998 — September 30, 1998	7.50%
October 1, 1998 — October 31, 1998	7.25%
November 1, 1998 — November 30, 1998	6.75%
December 1, 1998 — December 31, 1998	6.50%

ARC 8566A

COLLEGE STUDENT AID
COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsection 261.37(5), the College Student Aid Commission amends Chapter 10, "Federal Family Education Loan Programs," Iowa Administrative Code.

The purpose of this amendment is to allow eligible lenders to request loan collection assistance from the College Student Aid Commission 20 days earlier in the delinquency stage of the student loan borrower, thereby allowing for earlier default aversion intervention. This amendment will benefit borrowers, colleges, universities, lenders and the College Student Aid Commission by enhancing default reduction efforts and increasing the potential for reduced student loan defaults. This amendment accommodates new default aversion provisions signed into law by President Clinton on October 6, 1998, to be effective on October 1, 1998.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are contrary to public interest as the amendment will benefit all participants of the student loan program.

The Commission finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing, as it confers a benefit to the general public.

This amendment is intended to implement Iowa Code section 261.37(5).

This amendment became effective on November 25, 1998.

The following amendment is adopted.

Amend subrule 10.2(4), paragraph "c," as follows:

c. Lender request for assistance (LRA). An LRA may be sent no earlier than the ~~eightieth~~ *sixtieth* day and no later than the ~~one hundredth~~ *eightieth* day of delinquency unless a borrower cannot be located through normal skip-tracing procedures, in which case an LRA may be sent before the ~~eightieth~~ *sixtieth* day of delinquency.

[Filed Emergency 11/25/98, effective 11/25/98]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8563A

PERSONNEL DEPARTMENT[581]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, "Iowa Public Employees' Retirement System," Iowa Administrative Code.

These amendments include the following:

1. Chapter 21 is amended to reflect renumbering of Iowa Code chapter 97B by 1998 Iowa Acts, chapter 1183.

2. Subrule 21.4(1) is amended by adopting new paragraphs "c," "d," and "e" and redesignating current paragraphs "c" to "g" as "f" to "j." The new text clarifies the definition of "wages" as follows: (1) workers' compensation, long-term disability, and short-term disability payments (other than regular sick leave) are excluded; (2) compensatory time, including compensatory time paid in a lump sum, is included, but cannot exceed 240 hours per employee per year; and (3) lump sum payments of banked holiday pay are included if coded by the employer as compensatory time and excluded if coded by the employer as vacation time.

3. Subrule 21.4(1) is amended to clarify that some wage equivalents will not be treated as covered wages because the dollar value of the benefit conferred is small and cannot be accurately determined (e.g., tickets to athletic events that are not used). "Convenience of the employer" is also clarified.

4. Subrule 21.4(2) is amended to clarify how IPERS treats back pay settlements. Some settlements that are labeled as back pay settlements are just lump sum payments made for purposes of ending litigation. These are not covered wages. Even when a back pay settlement clearly consists of at least some back pay for covered employment, certain adjustments may be required to avoid spiking problems, such as deducting noncovered amounts included in the settlement. Adjustments may also be required to avoid understating the true amount of covered wages, such as adding back in interim wages, unemployment compensation, and taxes that have been deducted from the gross amount of a settlement.

5. Subrule 21.4(3) is amended by striking references to prior years' covered wage ceilings.

6. Paragraph 21.5(1)"a" is amended to implement statutory changes which require persons for whom IPERS coverage is optional to be covered unless they elect out of coverage within 60 days. Formerly, these persons were not covered unless they affirmatively elected coverage within 60 days. See 1998 Iowa Acts, chapter 1183, section 25.

7. A new subparagraph 21.5(1)"a"(48) is adopted to clarify that employees of a professional employment organization are not covered, unless the organization itself is a covered employer.

8. Subrule 21.6(4) is amended to clarify IPERS' current reporting practice.

9. Subrule 21.6(5) is amended to provide employers with guidance as to what constitutes good cause for extending the due date for contributions.

10. Subparagraph 21.6(9)"d"(3) is amended to reflect renumbering of Iowa Code chapter 97B and to strike text that is being adopted by the Department as 581—3.7(19A).

11. Paragraph 21.8(1)"a" is amended to implement a statutory change which provides that, effective July 1, 1999, employees who terminate covered employment and request a refund will receive their own accumulated contributions and a portion of the accumulated employer contributions. See 1998 Iowa Acts, chapter 1183, section 57.

12. Subrule 21.8(3) is amended to clarify IPERS' current practices and to implement statutory changes which permit persons who retire and are reemployed in covered employment to choose between increased benefits and a refund of the accumulated employee and employer contributions made during the period of reemployment. See 1998 Iowa Acts, chapter 1183, section 34.

13. Subrule 21.9(1) is amended to clarify that decisions as to whether a member is employed in a special service occupation are to be made by employers, except for decisions involving employees of the department of corrections, which

PERSONNEL DEPARTMENT[581](cont'd)

shall be jointly made by the department of personnel and the department of corrections.

14. Subrule 21.10(1) is amended to clarify that the payment of death benefits to beneficiaries of a member who retires and is reemployed will be governed by the beneficiary(ies) named in the retirement application, if a new beneficiary form is not filed, or by a subsequently filed designation of beneficiary form, if one is filed. In other words, members cannot select different beneficiaries for different periods of employment. An exception is created for cases in which the member chose a joint and survivor annuity and the contingent annuitant has predeceased or been divorced from the member. In those cases, death benefits for the period of reemployment will be payable to the member's estate, unless a new designation of beneficiary form is filed with IPERS.

15. Subrule 21.10(7) is amended to clarify that IPERS treats situations in which an invalid beneficiary designation is on file the same as if no beneficiary designation is on file. The subrule is also amended to clarify that IPERS treats cases in which no probate is filed the same as those in which the probate estate has been closed. The subrule is also amended to permit IPERS to pay a death benefit into the district court for disposition in situations when a trustee who has been designated as an IPERS beneficiary is unwilling or unable to serve.

16. Subrule 21.10(8) is amended to clarify that it applies to death benefits, not refunds.

17. Subrule 21.10(10) is amended by striking text relating to the crediting of interest on death benefits; a separate subrule relating to the crediting of interest on death benefits is adopted at subrule 21.14(3).

18. New subrules 21.10(16) and 21.10(17) are adopted to implement statutory changes permitting the reinstatement of forfeited death benefits and to indicate how interest will be credited to previously forfeited amounts. See 1998 Iowa Acts, chapter 1183, section 52.

19. Subrule 21.11(3) is amended to implement a statutory change decreasing the number of years of service required to retire without an age reduction from 30 to 20 for certain members (1998 Iowa Acts, chapter 1183, section 27); to strike superseded text and redesignate subsequent paragraphs; and to reflect renumbering of Iowa Code chapter 97B.

20. Subrule 21.11(6) is amended to give members whose benefits have been started involuntarily a limited period to choose an option other than the default option specified in the statute. The subrule is also amended to permit the forfeiture and subsequent reinstatement of benefits for members who are required to begin benefits but cannot be located. These amendments were adopted to ameliorate the effects of the federal mandatory minimum distribution requirements.

21. Subrule 21.11(9) is amended to provide that, in order to have a bona fide retirement, the member cannot, before retiring, enter into a contractual arrangement with the employer to return after the required four-month period of separation. The subrule is also amended to clarify that the new law requiring a complete termination from employment with all covered employers does not apply to legislators. Superseded text is stricken.

22. The first paragraph of rule 581—21.12(97B) is amended to clarify IPERS' method for crediting service when no wages are reported for certain employees.

23. Paragraph 21.12(1)"b" is amended to make grammar consistent.

24. Subrule 21.13(1) is amended to clarify that a member cannot begin retirement before the month following the

month when all employment with all covered employers has terminated.

25. Subrule 21.13(2) is amended to implement a statutory change decreasing the number of years of service required to retire without an age reduction from 30 to 20 for members who are at least aged 62. See 1998 Iowa Acts, chapter 1183, section 27. The amendment also sets forth the calculation of the age reduction.

26. Subrule 21.13(6) is amended to reflect a statutory change providing that sheriffs, deputy sheriffs, and airport firefighters who retire with excess years will have their percentage multiplier increased by 1.5 percent for each excess year, not to exceed an increase in the percentage multiplier of 12 percent. Superseded text is corrected. See 1998 Iowa Acts, chapter 1183, section 37.

27. Subrule 21.13(7) is amended to implement a statutory change that applies to the computation of the high three-year average for persons who terminate employment midyear. The Iowa Code previously permitted a computed year to be constructed which consisted of the final year's wages and wages from other years not already being used. The change limits the computed year from exceeding the member's highest actual calendar year of wages by more than 3 percent. Superseded text is stricken. See 1998 Iowa Acts, chapter 1183, section 23.

28. A new paragraph 21.13(9)"f" is adopted to implement a statutory change providing a 15 percent increase in benefit payments to persons who retired before July 1, 1986, and a 7 percent increase to those who retired on or after July 1, 1986, and before July 1, 1990. See 1998 Iowa Acts, chapter 1183, section 41.

29. Subrule 21.13(10), final paragraph, specifying how to determine if the percentages calculated under the hybrid rule exceed one, is amended to clarify IPERS current practice.

30. Subrule 21.14(2) is amended to implement statutory changes which permit the crediting of interest to all undistributed accounts and terminate the crediting of interest the quarter before the quarter a distribution is made (1998 Iowa Acts, chapter 1183, sections 52 and 61), to strike a portion of the subrule that is being adopted as subrule 21.14(3), and to reflect the renumbering of Iowa Code chapter 97B.

31. New subrules 21.14(3) and 21.14(4) are adopted to implement statutory changes which permit the crediting of interest to all undistributed accounts and terminate the crediting of interest the quarter before the quarter a distribution is made. See 1998 Iowa Acts, chapter 1183, sections 52 and 61.

32. Rule 581—21.16(97B) is amended to implement statutory changes which limit free service credit to leaves of absence that qualify for protection under the federal Family and Medical Leave Act (FMLA)(and similar leaves for employers that are not covered under the FMLA) and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). The changes also provide that service credit for leaves of absence (other than FMLA and USERRA leave) may be purchased and specify the methods of determining service purchase costs. The changes also reflect the renumbering of Iowa Code chapter 97B. See 1998 Iowa Acts, chapter 1183, section 69.

33. Subrule 21.18(4) is amended to reflect prior statutory changes. See Iowa Code section 97B.45(4).

34. Rule 581—21.19(97B) is amended to implement statutory changes increasing the limit on wages that can be earned by retirees before IPERS benefits are reduced; to implement statutory changes relating to the recalculation of a retiree's monthly benefit following the termination of a peri-

PERSONNEL DEPARTMENT[581](cont'd)

od of reemployment (1998 Iowa Acts, chapter 1183, sections 30, 32, and 33); to strike superseded text; and to reflect the renumbering of Iowa Code chapter 97B.

35. Paragraph 21.24(2)"b" is amended to implement a statutory change requiring a member to have four quarters of wages on file before a service purchase can be made (1998 Iowa Acts, chapter 1183, section 65), to strike superseded text and clarify IPERS' current practice, and to reflect the renumbering of Iowa Code chapter 97B.

36. Paragraph 21.24(2)"e" is amended by striking superseded text.

37. Paragraph 21.24(2)"f" is amended by striking superseded text and adopting new text to implement a statutory change requiring members to pay the actuarial cost of a service purchase based on other public employment. See 1998 Iowa Acts, chapter 1183, section 65.

38. Subrule 21.24(3) is amended by striking superseded text and adopting new text to implement a statutory change requiring members to pay the actuarial cost of a service purchase based on previously refunded IPERS credit. See 1998 Iowa Acts, chapter 1183, section 67.

39. Paragraph 21.24(5)"c" is amended to implement a statutory change requiring a member to have four quarters of wages on file before a service purchase can be made (1998 Iowa Acts, chapter 1183, section 68); to strike superseded text and clarify IPERS' current practice; and to reflect the renumbering of Iowa Code chapter 97B.

40. Paragraph 21.24(5)"f" is amended by striking superseded text and adopting new text to implement a statutory change requiring members to pay the actuarial cost of a service purchase based on military service. See 1998 Iowa Acts, chapter 1183, section 68.

41. A new paragraph 21.24(6)"d" is adopted to implement a statutory change requiring legislators and former legislators to pay 40 percent and the Iowa legislature to pay 60 percent of the actuarial cost of a legislative service purchase. See 1998 Iowa Acts, chapter 1183, sections 63 and 64.

42. Current subrule 21.24(9) is renumbered as 21.24(11) and new subrules 21.24(9) and 21.24(10) are adopted. New subrule 21.24(9) implements a statutory change requiring members to purchase leaves of absence other than leaves of absence protected under the FMLA and USERRA. See 1998 Iowa Acts, chapter 1183, section 69. New subrule 21.24(10) implements a statutory change permitting members who are or were employed in an optional coverage position to purchase service credit for the periods that they would have been covered if a timely election had been filed. The subrule also clarifies that a member must satisfy the general service purchase provisions of subrule 21.24(2), as revised, including eligibility requirements and cost calculations.

43. A new rule 581—21.30(97B) is adopted, implementing dividend payments to post-July 1, 1990, retirees. See 1998 Iowa Acts, chapter 1183, section 40.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to public interest, and that these amendments should be implemented immediately because the amendments revise Chapter 21 in a manner which is beneficial to members, or is required by 1998 Iowa Acts, chapter 1183.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments be made effective upon filing with the Administrative Rules Coordinator on November 25, 1998, because they confer benefits and remove restrictions on interested parties or are required by

statute and will give employers and employees adequate notice of changes.

These amendments are also published herein under Notice of Intended Action as ARC 8562A to allow public comment.

The Department adopted these amendments on November 25, 1998.

These amendments became effective November 25, 1998.

These amendments are intended to implement Iowa Code chapter 97B as amended by 1998 Iowa Acts, chapter 1183.

The following amendments are adopted.

ITEM 1. Amend subrule 21.4(1) by adopting new paragraphs "c" to "e" and relettering former paragraphs "c" to "g" as paragraphs "f" to "j" as follows:

c. Workers' compensation, unemployment, short-term and long-term disability payments. Wages do not include workers' compensation payments, unemployment payments, or short-term and long-term disability payments made by an insurance company or third-party payer, such as a trust. Wages include payments for sick leave which are a continuation of salary payments if paid from the employer's general assets, regardless of whether the employer labels the payments as sick leave, short-term disability, or long-term disability.

d. Compensatory time. Wages include amounts paid for compensatory time taken in lieu of regular work hours and when paid as a lump sum. However, compensatory time paid in a lump sum shall not exceed 240 hours per employee per year or any lesser number of hours set by the employer. Each employer shall determine whether to use the calendar year or a fiscal year other than the calendar year when setting its compensatory time policy.

e. Banked holiday pay. If an employer codes banked holiday time as holiday or vacation pay, the banked holiday pay will be treated as vacation pay when calculating covered wages. If an employer codes banked holiday pay as compensatory time, it will be combined with other compensatory time and subject to the time limits set forth in paragraph "d" above.

ITEM 2. Amend subrule 21.4(1), relettered paragraph "h," as follows:

h. Wage equivalents. Items such as food, lodging and travel pay which are includable as employee income, if they are paid as compensation for employment. The basic test is whether or not such wage equivalent was given for the convenience of the employee or employing unit. Wage equivalents are not reportable under IPERS if given for the convenience of the employing unit or *are not reasonably quantifiable*. *Wage equivalents that are not included in the member's federal taxable income shall be deemed to be for the convenience of the employer. A wage equivalent is not reportable if the employer certifies that there was a substantial business reason for providing the wage equivalent, even if the wage equivalent is included in the employee's federal taxable income.* Wages paid in any other form than money are measured by the fair market value of the meals, lodging, travel or other wage equivalents.

ITEM 3. Amend subrule 21.4(1), relettered paragraph "j," as follows:

j. Wages for certain testing purposes. Wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include a member's gross wages, excluding nontaxable fringe benefits and all amounts placed in tax-deferred vehicles including, but not limited to, plans established pursuant to Internal Revenue Code Sections 125,

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401(k), 403, and 457, and excluding IPERS contributions paid after December 31, 1994, by employers on behalf of employees. Effective January 1, 1996, the annual wages of a member taken into account for testing purposes under any of the applicable sections of Internal Revenue Code shall not exceed the applicable amount set forth in Internal Revenue Code Section 401(a)(17), and any regulations promulgated pursuant to that section. The foregoing sentence shall not be deemed to permit the maximum amount of wages of a member taken into account for any other purpose under Iowa Code chapter 97B to exceed the maximum covered wage ceiling under Iowa Code section ~~97B.41(20)~~ 97B.1A(25). Effective January 1, 1998, wages for testing purposes to ensure compliance with Internal Revenue Code Section 415 shall include elective deferrals placed in tax-deferred plans established pursuant to Internal Revenue Code Sections 125, 401(k), 403, and 457 by employers on behalf of employees.

ITEM 4. Amend subrule 21.4(2) as follows:

21.4(2) Wages are reportable in the quarter in which they are actually paid to the employee, except in cases where employees are awarded lump sum payments of back wages, whether as a result of litigation or otherwise, in which case the employer shall file wage adjustment reporting forms with IPERS allocating said wages to the periods of service for which such payments are awarded. Employers shall forward the required employer and employee contributions and interest to IPERS.

IPERS contributions must be calculated on the gross amount of a back pay settlement before the settlement is reduced for taxes, interim wages, unemployment compensation, and similar mitigation of damages adjustments. IPERS contributions must be calculated by reducing the gross amount of a back pay settlement by any amounts not considered covered wages such as, but not limited to, lump sum payments for medical expenses.

Notwithstanding the foregoing, a back pay settlement that does not require the reinstatement of a terminated employee and payment of the amount of wages that would have been paid during the period of severance (before adjustments) shall be treated by IPERS as a "special lump sum payment" under subrule 21.4(1) above and shall not be covered.

ITEM 5. Amend subrule 21.4(3) and the implementation sentence for rule 581—21.4(97B) as follows:

21.4(3) One quarter of service will be credited for each quarter in which a member is paid covered wages.

a. "Covered wages" means wages of a member during periods of service that do not exceed the annual covered wage maximum. Effective January 1, 1997, and for each subsequent calendar year, covered wages shall not exceed \$160,000 or the amount permitted for that year under Section 401(a)(17) of the Internal Revenue Code.

Prior covered wage ceilings include:

\$20,000, effective January 1, 1976
 \$21,000, effective January 1, 1984
 \$22,000, effective January 1, 1986
 \$23,000, effective January 1, 1987
 \$24,000, effective January 1, 1988
 \$26,000, effective January 1, 1989
 \$28,000, effective January 1, 1990
 \$31,000, effective January 1, 1991
 \$34,000, effective January 1, 1992
 \$35,000, effective January 1, 1993
 \$38,000, effective January 1, 1994
 \$41,000, effective January 1, 1995
 \$44,000, effective January 1, 1996

b. Effective January 1, 1988, covered wages shall include wages paid a member regardless of age. (From July 1, 1978, until January 1, 1988, covered wages did not include wages paid a member on or after the first day of the month in which the member reached the age of 70.)

c. If a member is employed by more than one employer during the calendar year, the total amount of wages paid shall be included in determining the annual covered wage maximum. If the amount of wages paid to a member by several employers during a calendar year exceeds the covered wage limit, the amount of the excess shall not be subject to contributions required by Iowa Code section 97B.11. See subrule 21.8(1), paragraph "h."

This rule is intended to implement Iowa Code section ~~97B.41(20)~~ 97B.1A(25).

ITEM 6. Amend paragraph 21.5(1)"a," introductory paragraphs, as follows:

a. A person is in employment as defined by Iowa Code chapter 97B if the person and the covered employer enter into a relationship which both recognize to be that of employer/employee. A person is not in employment if the person volunteers services to a covered employer for which the person receives no remuneration. An employee is an individual who is subject to control by the agency for whom the individual performs services for wages. The term control refers only to employment and includes control over the way the employee works, where the employee works and the hours the employee works. The control need not be actually exercised for an employer/employee relationship to exist; the right to exercise control is sufficient. A public official may be an "employee" as defined in the agreement between the state of Iowa and the Secretary of Health, Education and Welfare, without the element of direction and control.

Effective July 1, 1994, a person who is employed in a position which allows IPERS coverage to be elected as specified in Iowa Code section ~~97B.41(8)~~ "b" 97B.1A(8) must file a one-time election form with IPERS for coverage. If the person was employed before July 1, 1994, the election must be postmarked on or before July 1, 1995. If the person was employed on or after July 1, 1994, the election must be postmarked within 60 days from the date the person was employed. Coverage will be prospective from the date the election is approved by IPERS. The election, once filed, is irrevocable and membership continues until the member terminates covered employment. The election window does not allow members who had been in coverage to elect out.

Effective July 1, 1994, members employed before that date as a gaming enforcement officer, a fire prevention inspector peace officer, or an employee of the division of capitol police (except clerical workers), may elect coverage under Iowa Code chapter 97A in lieu of IPERS. The election must be directed to the board of trustees established in Iowa Code section 97A.5 and postmarked on or before July 1, 1995. Coverage under IPERS will terminate when the board of trustees approves the election. The election, once received by the board of trustees, is irrevocable. If no election is filed by that date, the member will remain covered by IPERS until termination of covered employment. The election window does not allow a member who previously elected out of IPERS to reverse the decision and become covered under IPERS.

Effective January 1, 1999, new hires who may elect out of IPERS coverage shall be covered on the date of hire and shall have 60 days to elect out of coverage in writing using IPERS' forms. Notwithstanding the foregoing, employees who had the right to elect IPERS coverage prior to January

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1, 1999, but did not do so, shall be covered as of January 1, 1999, and shall have until December 31, 1999, to elect out of coverage.

Employment as defined in Iowa Code chapter 97B is not synonymous with IPERS membership. Some classes of employees are excluded under Iowa Code section ~~97B.41(8) "b"~~ 97B.1A(8) "b" from membership by their nature. The following subparagraphs are designed to clarify the status of certain employee positions.

ITEM 7. Amend subparagraphs 21.5(1)"a"(4), (9), (11), (12), (14), (24), (30), (32), (33), (37), and (45), as follows:

(4) Judicial magistrates are not included unless they elect out of IPERS coverage. Having made a choice to remain in elect IPERS coverage, a judicial magistrate may not revoke that election and discontinue such coverage.

(9) Part-time elected mayors, mayors of townships, and mayors that are paid on a fee basis are not covered under IPERS unless they elect out of coverage. All other mayors, including appointed mayors and full-time elected mayors, whether elected by popular vote or by some other means, are covered.

(11) Members of county boards of supervisors who receive an annual salary are included. ~~but effective July 1, 1992, Effective for terms of office beginning January 1, 1999, and later, part-time~~ members of county boards of supervisors who receive an annual salary or are paid on a per diem basis are ~~excluded~~ included unless they file an application for elect out of coverage.

(12) Temporary employees of the general assembly who are employed for less than six months in a calendar year or work less than 1,040 hours in a calendar year are excluded from IPERS included unless the employee elects out of coverage. If coverage is elected, the member may not terminate coverage until termination of covered employment.

(14) Drainage district employees who have vested rights to IPERS through earlier participation or employees of drainage districts who elect IPERS coverage by submitting a formal application are included unless they elect out of coverage.

(24) Members of the ministry, rabbinate or other religious order who perform full- or part-time religious service for a covered employer are included; but members of the ministry, rabbinate or other religious order who have taken the vow of poverty are excluded, unless within one year of commencing employment or no later than July 1, 1985, for individuals who are members of the system on July 1, 1984, a member makes an application to IPERS to be covered under this chapter included, unless they elect out of coverage.

(30) Members of the state transportation commission, the board of parole, and the state health facilities council are excluded included unless they elect out of coverage by filing applications with IPERS to be covered.

(32) Persons employed as city managers, or as city administrators performing the duties of city managers, under a form of city government listed in Iowa Code chapter 372 or 420 are excluded included unless employees make application to IPERS to be covered under the provisions of this chapter they elect out of coverage.

(33) Employees appointed by the state board of regents who are covered unless, at the discretion of the state board of regents, they elect coverage in a retirement system qualified by the state board of regents are excluded from IPERS coverage.

(37) Effective July 1, 1994, employees of area agencies on aging are excluded from coverage if the area agency has provided for participation by all of its eligible employees in

an alternative qualified plan pursuant to the requirements of the federal Internal Revenue Code. If an area agency on aging does not have or terminates participation in an alternative plan, coverage under IPERS shall begin immediately.

(45) ~~Members Appointed and full-time elective members~~ of boards and commissions who receive a set salary shall be covered. *Effective January 1, 1999, part-time elective members of boards and commissions not otherwise described in these rules who receive a set salary are included unless they elect out of coverage.* Members of boards, other than county boards of supervisors, and commissions, including appointed and elective full-time and part-time members, who receive only per diem and expenses shall not be covered.

ITEM 8. Adopt new subparagraph 21.5(1)"a"(48) as follows:

(48) Persons who are employed by professional employment organizations, temporary staffing agencies, and similar noncovered employers and are leased to covered employers shall be excluded. Notwithstanding the foregoing, persons who are employed by a covered employer and leased to a noncovered employer shall be covered.

ITEM 9. Amend rule 581—21.5(97B), implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~97B.41(8) "b," 97B.42, 97B.42A, 97B.42B, 97B.49(16) "d"(2) 97B.49C, and 97B.52A.~~

ITEM 10. Amend subrule 21.6(4) as follows:

21.6(4) For employers filing quarterly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the calendar quarter in which the wages were paid.

For employers filing monthly employer remittance advice forms, contributions must be received by IPERS on or before the fifteenth day of the month following the close of the month in which wages were paid.

Any employer filing monthly or quarterly employer remittance advice forms for two or more entities shall attach to each remittance form the checks covering the contributions due on that form. The combining of contributions due for payment from two or more entities into one check or multiple checks will not be accepted. Improperly paid contributions are considered as unpaid. Upon the request of the employer, IPERS may grant a waiver of the requirement which prohibits the combining of contributions. ~~Entities which have A single entity which has several accounts will be required to report all wages under one main account effective January 1, 1995.~~

ITEM 11. Amend subrule 21.6(5) as follows:

21.6(5) A request for an extension of time to pay a contribution may be granted by IPERS for good cause if presented before the due date, but no extension shall exceed 30 days after the end of the calendar quarter. If an employer who has been granted an extension fails to pay the contribution on or before the end of the extension period, interest shall be charged and paid from the original due date as if no extension had been granted.

To establish good cause for an extension of time to pay, the employer must show that the failure to pay was not due to mere negligence, lack of ordinary care or attention, carelessness or inattention. The employer must affirmatively show that it did not pay timely because of some occurrence beyond the control of the employer.

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ITEM 12. Amend subparagraph 21.6(9)"d"(3) as follows:

(3) Correctional officers as provided for in Iowa Code section 97B.49(16)"d"(3) 97B.49B.

~~For the purposes of this subrule, a correctional officer position shall be defined as any permanent, merit system covered position of the Iowa department of corrections whose primary purpose is, through ongoing direct inmate contact, to enforce and maintain discipline, safety, and security within a correctional facility. Incumbents of those positions shall be eligible for "protection occupation" coverage only while in an eligible position that meets the definition.~~

Employees who, prior to December 22, 1989, were in a "correctional officer" position but whose position is found to no longer meet this definition on or after that date, shall retain coverage, but only for as long as the employee is in that position or another "correctional officer" position that meets this definition. Movement to a position that does not meet this definition shall cancel "protection occupation" coverage.

ITEM 13. Amend rule 581—21.6(97B), implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 97B.11, 97B.11A, 97B.14, and 97B.49(7), (8), (10) and (16) 97B.49A to 97B.49I.

ITEM 14. Amend paragraph 21.8(1)"a" as follows:

a. A member is eligible for a refund of the member's accumulated contributions 30 days after the member's last paycheck is issued from which IPERS contributions will be deducted. *Effective July 1, 1999, a vested member may also receive a refund of a portion of the employer's accumulated contributions. The refundable portion of the employer's accumulated contributions shall be a fraction, the numerator of which is the member's years of service and the denominator of which is the applicable years, 30, 25, or 22, for that member. In no event will this fraction ever exceed one.* The last pay date must be certified by the employer on the refund application unless the member has not been paid covered wages for at least one year. The employee's "termination date" is the last date on which the employee was paid and certified by the employer on the IPERS refund application. The applicant's signature must be notarized. Upon receiving an eligible member's application for refund, IPERS shall pay to the terminated member the amount of the member's accumulated contributions currently reported to, and processed by, IPERS as of the date of the refund. Upon receipt of the final contributions from the member's employer, a supplemental refund will be paid to the terminated member. Terminated members must keep IPERS advised in writing of any change in address so that refunds and tax documents may be delivered.

ITEM 15. Amend subrule 21.8(3) as follows:

21.8(3) Refund of contributions—after reemployment.

a. *Less than six months.* A retired member who returns to permanent covered employment, but who resigns within six months of the date the reemployment began, is eligible to have the *member* contributions for this period refunded. The contributions made by the employer will also be refunded to the employer.

b. *Six months or longer.* ~~Upon the determination of IPERS that the reemployment cannot be included in a recomputation of the retired member's benefits, IPERS will initiate action to refund the employee's and credit the employer's contributions.~~ A retired member who returns to permanent employment and subsequently terminates the mem-

ber's employment may elect, ~~in lieu of to receive an increased monthly allowance, to receive or a refund of the member's and, effective July 1, 1998, employer's accumulated contributions accrued during the period of reemployment.~~ A reemployed member who elects a refund under this subrule in lieu of an increased monthly allowance shall forfeit all other rights to benefits under the system with respect to the period of reemployment. *If IPERS determines that the reemployment will not increase the amount of a member's monthly benefit, a member can only elect the refund.*

ITEM 16. Amend subrule 21.9(1) as follows:
21.9(1) Procedures.

a. A party who wishes to appeal a decision by IPERS other than a special service classification shall, within 30 days after notification was mailed to the party's last-known address, file with IPERS a notice of appeal in writing setting forth:

- (1) The name, address, and social security number of the applicant;
- (2) A reference to the decision from which the appeal is being made;
- (3) The fact that an appeal from the decision is being made; and
- (4) The grounds upon which the appeal is based.

Upon receipt of the appeal, IPERS shall conduct an internal review of the facts and circumstances involved, in accordance with its appeal review procedure. IPERS shall issue a final agency decision which becomes final unless within 30 days of issuance the member files a notice of further appeal. Upon receipt of notification of further appeal, IPERS shall inform the department of inspections and appeals of the filing of the appeal and of relevant information pertaining to the case in question. In determining the date that an appeal or any other document is filed with IPERS or the department of inspections and appeals, the following shall apply: An appeal or any other document delivered by mail shall be deemed to be filed on the postmark date; an appeal or any other document delivered by any other means shall be deemed to be filed on the date of receipt. The department of inspections and appeals shall hold a hearing on the case and shall affirm, modify, or reverse the decision by IPERS.

b. *Members shall file appeals of their special service classifications with their respective employers, using the appeal procedures of such employers. The appeal procedures for department of corrections employees shall be specified in rules adopted by the personnel division of the Iowa department of personnel. IPERS shall have no jurisdiction over special service classification appeals.*

ITEM 17. Amend subrule 21.10(1) as follows:

21.10(1) Designation of beneficiaries. To designate a beneficiary, the member must complete an IPERS designation of beneficiary form, which must be filed with IPERS. The designation of a beneficiary by a retiring member on the application for monthly benefits is accepted by IPERS in lieu of a completed designation form. IPERS may consider as valid a designation of beneficiary form filed with the member's employer prior to the death of the member, even if that form was not forwarded to IPERS prior to the member's death. *If a retired member is reemployed in covered employment, the most recently filed beneficiary form shall govern the payment of all death benefits for all periods of employment. Notwithstanding the foregoing sentence, a reemployed IPERS Option 4 retiree may name someone other than the member's contingent annuitant as beneficiary, but only for death benefits accrued during the period of reem-*

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ployment and only if the contingent annuitant has died or has been divorced from the member. If a reemployed IPERS Option 4 retiree dies without filing a new beneficiary form, the death benefits accrued for the period of reemployment shall be paid to the member's contingent annuitant, unless the contingent annuitant has died or been divorced from the member. If the contingent annuitant has been divorced from the member, any portion of the death benefits awarded in a qualified domestic relations order (QDRO) shall be paid to the contingent annuitant as alternate payee, and the remainder of the death benefits shall be paid to the member's estate, or the member's heirs if no estate is probated.

ITEM 18. Amend subrule 21.10(7) as follows:

21.10(7) Payment of the death benefit when no designation of beneficiary or an invalid designation of beneficiary is on file with IPERS shall be made in one of the following ways:

a. Where the estate is open, payment shall be made to the administrator or executor.

b. Where *no estate is probated* or the estate is closed prior to the filing with IPERS of an application for death benefits, payment will be made to the surviving spouse. ~~If there is no surviving spouse, payment will be made to the executor or administrator as agent for the estate.~~ The following documents shall be presented as supporting evidence:

- (1) Copy of the will, if any;
- (2) Copy of any letters of appointment; and
- (3) Copy of the court order closing the estate and discharging the executor or administrator.

c. Where no estate is probated or the estate is closed prior to filing with IPERS and there is no surviving spouse, ~~payment will be made to the surviving spouse, if any.~~ ~~If there is no surviving spouse,~~ payment will be made to the heirs-at-law as determined by the intestacy laws of the state of Iowa.

d. *Where a trustee has been named as designated beneficiary and is not willing to accept the death benefit or otherwise serve as trustee, IPERS may, but is not required to, apply to the applicable district court for an order to distribute the funds to the clerk of court on behalf of the beneficiaries of the member's trust. Upon the issuance of an order and the giving of such notice as the court prescribes, IPERS may deposit the death benefit with the clerk of court for distribution. IPERS shall be discharged from all liability upon deposit with the clerk of court.*

ITEM 19. Amend subrule 21.10(8), introductory paragraph, as follows:

21.10(8) Where the member dies prior to the first month of entitlement, the ~~refund of accumulated contributions~~ death benefit shall include the accumulated contributions of the member plus the product of an amount equal to the highest year of covered wages of the deceased member and the number of years of membership service divided by the "applicable denominator," as provided in Iowa Code section 97B.52(1). The amount payable shall not be less than the amount that would have been payable on the death of the member on June 30, 1984. The calculation of the highest year of covered wages shall use the highest calendar year of covered wages reported to IPERS.

ITEM 20. Amend subrule 21.10(10) as follows:

21.10(10) Payment may be made to a conservator if the beneficiary is under the age of 18 and the total dollar amount to be paid by IPERS to a single beneficiary is \$10,000 or more. Payment may be made to a custodian if the total dollar amount to be paid by IPERS to a single beneficiary is less than \$10,000.

~~Interest will accrue on the member's accumulated contributions until the total sum is paid to the minor, but no later than the maximum period permitted under subrule 21.10(15) below.~~

ITEM 21. Amend subrule 21.10(15) as follows:

21.10(15) A completed application must be filed with the department no later than five years after the date of the member's death or the total sum is forfeited. A beneficiary's right to receive a death benefit beyond the five-year limitation shall be extended to the extent permitted under Internal Revenue Code Section 401(a)(9) and the applicable treasury regulations. Notwithstanding the foregoing, the maximum claims period shall not exceed the period required under Internal Revenue Code Section 401(a)(9), which may be less than five years for death benefits payable under benefit options described in Iowa Code sections ~~97B.49 97B.49A to 97B.49I~~ and 97B.51(6) and for members who die after their required beginning date. The claims period for all cases in which the member's death occurs during the same calendar year in which a claim must be filed under this subrule shall end April 1 of the year following the year of the member's death.

ITEM 22. Adopt new subrules 21.10(16) and 21.10(17) as follows:

21.10(16) Effective July 1, 1998, a member's beneficiary or heir may file a claim for previously forfeited death benefits. Interest for periods prior to the date of the claim will only be credited through the quarter that the death benefit was required to be forfeited by law. For claims filed prior to July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the third quarter of 1998. For claims filed on or after July 1, 1998, interest for the period following the quarter of forfeiture will accrue beginning with the quarter that the claim is received by IPERS. IPERS shall not be liable for any excise taxes imposed by the Internal Revenue Service on reinstated death benefits.

21.10(17) Interest is only accrued if the member dies before the member's retirement first month of entitlement (FME) or, for a retired reemployed member, before the member's reemployment FME, and is only accrued with respect to the retired or retired reemployed member's accumulated contributions account.

ITEM 23. Amend rule ~~581—~~**21.10(97B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~97B.1A(8), 97B.1A(17), 97B.34, 97B.34A, 97B.41(8), 97B.41(12), 97B.44 and 97B.52.~~

ITEM 24. Amend subrule 21.11(3) as follows:

21.11(3) Retirement benefits and the age reduction factor.

a. A member shall be eligible for monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 65, if otherwise eligible.

b. *Effective July 1, 1998, a member shall be eligible for full monthly retirement benefits with no age reduction effective with the first of the month in which the member becomes the age of 62, if the member has ~~30~~ 20 full years of service and is otherwise eligible.*

~~c. Effective July 1, 1988, a member shall be eligible to receive full monthly retirement benefits effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 92, provided that the member is at least the age of 55 and has at least 30 years' service.~~

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d. ~~Effective July 1, 1990, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 92, provided that the member is at least the age of 55.~~

e. ~~Effective July 1, 1996, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 90, provided that the member is at least the age of 55.~~

f. c. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.

These benefits are computed in accordance with Iowa Code sections ~~97B.11 and 97B.49~~ 97B.49A to 97B.49I.

ITEM 25. Amend subrule 21.11(6) as follows:

21.11(6) A member retiring on or after the early retirement or normal retirement date shall submit a written notice to IPERS setting forth the retirement date, provided the date is after the member's last day of service. A member's first month of entitlement shall be no earlier than the first day of the first month after the member's last day of service or, if later, the month provided for under subrule 21.18(2). A member who does not begin benefits timely in the first month that begins after the member's last day of service may receive up to six months of retroactive payments. The period for which retroactive payments may be paid is measured from the month that a valid contact occurs. For purposes of this subrule, a "contact" means a telephone call, facsimile transmission, E-mail, visit to IPERS at its offices or off-site locations, or a letter or other writing requesting a benefits estimate or application to retire, whichever is received first. A contact is only valid if a completed application to retire is received within six months following the month that a benefits estimate or application to retire form is mailed to the member in response to the contact. If a completed application to retire form is received more than six months after such a benefits estimate or application to retire is mailed, retroactive payments may only be made for up to six months preceding the month that the completed application to retire is received.

Notwithstanding the foregoing, IPERS shall commence payment of a member's retirement benefit under Iowa Code section ~~97B.49 sections 97B.49A to 97B.49I~~ (under Option 2) no later than the "required beginning date" specified under Internal Revenue Code Section 401(a)(9), even if the member has not submitted the appropriate notice. If the lump sum actuarial equivalent of ~~option 2 under Iowa Code section 97B.48(1)~~ could have been elected by the member, payments shall be made in ~~said~~ a lump sum rather than as a monthly allowance. The "required beginning date" is defined as the later of: (1) April 1 of the year following the year that the member attains the age of 70½, or (2) April 1 of the year following the year that the member actually terminates all covered and noncovered employment with employers covered under Iowa Code chapter 97B.

If IPERS distributes a member's benefits without the member's consent in order to begin benefits on or before the required beginning date, the member may elect to receive benefits under an option other than the mandatory options described above if the member contacts IPERS in writing within 60 days of the first mandatory distribution. IPERS shall inform the member what adjustments or repayments are required in order to make the change.

If a member cannot be located so as to commence payment on or before the required beginning date described above, the member's benefit shall be forfeited. However, if a member later contacts IPERS and wishes to file an application for retirement benefits, the member's benefits shall be reinstated. A member whose benefits are forfeited and then reinstated under this subrule shall only qualify for retroactive payments to the extent provided under Iowa Code section 97B.48(2).

ITEM 26. Amend subrule 21.11(9) as follows:

21.11(9) To receive retirement benefits, a member under the age of 70 must officially leave employment with an IPERS covered employer, give up all rights as an employee, and complete a period of bona fide retirement. A period of bona fide retirement means four or more consecutive calendar months for which the member qualifies for monthly retirement benefit payments. ~~Effective January 1, 1993, in order to establish a bona fide retirement, a member must remain out of any covered employment with an IPERS covered employer for four consecutive months. The qualification period begins with the member's first month of entitlement for retirement benefits as approved by IPERS. A member may not return to covered employment before filing a completed application for benefits. If eligibility for and payment of benefits is retroactive at least four months prior to the application filing date, the member may return to non-covered employment with a covered employer after the four qualifying months have elapsed but before filing the application.~~

A member will not be considered to have a bona fide retirement if the member is a school or university employee and returns to work with the employer after the normal summer vacation. In other positions, temporary or seasonal interruption of service which does not terminate the period of employment does not constitute a bona fide retirement. *A member also will not be considered to have a bona fide retirement if the member has, prior to the member's first month of entitlement, entered into contractual arrangements with the employer to return to employment after the expiration of the four-month bona fide retirement period.*

Effective July 1, 1990, a school employee will not be considered terminated if, while performing the normal duties, the employee performs for the same employer additional duties which take the employee beyond the expected termination date for the normal duties. Only when all the employee's compensated duties cease for that employer will that employee be considered terminated.

The bona fide retirement period will be waived, however, if the member is elected to public office which term begins during the normal four-month bona fide retirement period. This waiver does not apply if the member was an elected official who was reelected to the same position for another term. *The bona fide retirement period will also be waived for state legislators who terminate their nonlegislative employment and the IPERS coverage for their legislative employment and begin retirement but wish to continue with their legislative duties.*

A member will have a bona fide retirement if the member returns to work as an independent contractor with a public employer during the four-month qualifying period. Independent contractors are not covered under IPERS.

~~Notwithstanding any of the foregoing provisions, a member who terminates covered employment but maintains an employment relationship with an employer that made contributions to the system on the member's behalf Effective July 1, 1998, a member does not have a bona fide retirement~~

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until all employment *with covered employers*, including employment which is not covered by this chapter, with such employer is terminated ~~for at least 30 days and the member receives at least four monthly benefit payments~~. In order to receive retirement benefits, the member must file a completed application for benefits form with the department before returning to any employment with the same employer.

ITEM 27. Amend rule 581—21.11(97B), implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 97B.5, 97B.15, 97B.48(1), ~~97B.49(5)~~ 97B.49A to 97B.49I, 97B.50(1), 97B.51, 97B.52, and 97B.52A.

ITEM 28. Amend rule 581—21.12(97B), introductory paragraph, as follows:

~~581—21.12(97B)~~ **Service credit.** An employee working in a position for a school district or other institution which operates on a nine-month basis shall be credited with a year of service for each year in which three quarters of coverage are recorded, if the employee returns to covered employment the next operating year. *The foregoing sentence shall be implemented as follows. A member will receive credit for the third quarter when no wages are reported in that quarter if the member works the following three calendar quarters and had covered wages in the immediately preceding second quarter.* An individual employed on a fiscal- or calendar-year basis shall be credited with a year of service for each year in which four quarters of coverage are recorded.

ITEM 29. Amend paragraph 21.12(1)"b" as follows:

b. Effective July 1, 1990, "public employee" means not only an employee who had made contributions under IOASI, but also includes ~~members a member~~ who had service as a public employee prior to July 4, 1953, in another state, or for the federal government, or within other retirement systems established in the state of Iowa and who ~~qualify~~ *qualifies* for the buy-in programs referenced in 21.24(2). To receive credit for service in another system, however, the public employee who had not made contributions to IOASI but who wishes to receive prior service credit for public employment elsewhere must meet the following conditions:

- (1) Have been a public employee;
- (2) Waive on a form provided by IPERS all rights to a retirement in another system for that period of employment for the public employer(s), if any; and
- (3) Submit verification of service for that other public employer to IPERS.

A qualifying member who decides to purchase IPERS credit for prior service must make employer and employee contributions to IPERS for each year of service or fraction thereof allowed in this buy-in. This contribution shall be equal to the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, using the rates in Iowa Code sections 97B.11 ~~and 97B.49~~, 97B.49B and 97B.49C then applicable to the type of service credit being purchased, and multiplied by the number of years or fraction thereof being purchased from other public employment.

ITEM 30. Amend subrule 21.13(1) as follows:

21.13(1) If a member has four or more complete years of service credit in IPERS, a monthly payment allowance will be paid beginning with the first full month after ~~the effective date of retirement~~ *all employment with all covered employers terminates*. This allowance will be paid in accordance with the applicable paragraph of this rule and any option the member may elect pursuant to Iowa Code section 97B.51. IPERS shall determine on the applicable forms which desig-

nated fractions of a member's monthly retirement allowance payable to contingent annuitants shall be provided as options under Iowa Code section 97B.51(1). Any option elected by a member under Iowa Code section 97B.51 must comply with the requirements of the Internal Revenue Code that apply to governmental pension plans, including but not limited to Internal Revenue Code Section 401(a)(9). If a member has less than four complete years of service credit, the benefit receivable will be computed on a money purchase basis, with reference to annuity tables used by IPERS in accordance with the member's age. Benefits are not payable before the age of 55, except after July 1, 1990, in accordance with an early distribution in the case of retirement due to disability, as described in rule 581—21.22(97B).

ITEM 31. Amend subrule 21.13(2) as follows:

21.13(2) Reduction for early retirement.

a. Effective July 1, 1988, a member's benefit formula will be reduced by one-quarter of 1 percent for each month the member's retirement precedes the normal retirement date, as defined in Iowa Code section 97B.45 excluding section 97B.45(4). The following are situations in which a member is considered to be taking early retirement:

(1) If a member is less than ~~the age of 65 years of age in the month of the member's retirement in the member's first month of entitlement~~ and has less than ~~30~~ 20 years of service; or

(2) If a member is less than 62 years of age in the month of the member's retirement and has ~~30~~ 20 years of service.

~~b. Effective July 1, 1986, a member who is at least the age of 62 and has at least 30 years of service may retire without application of an early retirement penalty. Effective July 1, 1988, a member who has at least 30 years of service, and whose years of service plus age in the month of the member's retirement equal or exceed 92, may retire without an early retirement penalty.~~

~~c. Effective July 1, 1990, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 92, provided that the member is at least the age of 55.~~

~~d. Effective July 1, 1996, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 90, provided that the member is at least the age of 55.~~

~~e. b. Effective July 1, 1997, a member shall be eligible to receive monthly retirement benefits with no age reduction effective the first of the month in which the member's age on the last birthday and the member's years of service equal or exceed 88, provided that the member is at least the age of 55.~~

~~f. c. Effective July 1, 1991, a member qualifying for early retirement due to disability under Iowa Code section 97B.50 shall not be subject to a reduction in benefits due to age.~~

~~d. If a member retires with at least 20 years of service but is less than the age of 62, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 62. If a member retires with less than 20 years of service, the age reduction shall be calculated by deducting .25 percent per month for each month that the first month of entitlement precedes the month in which the member attains the age of 65.~~

ITEM 32. Amend subrule 21.13(4) as follows:

21.13(4) Members employed before January 1, 1976, and retiring after January 1, 1976, with four or more complete

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years of membership service shall be eligible to receive the larger of a monthly formula benefit equal to the member's total covered wages multiplied by one-twelfth of one and fifty-seven hundredths percent, multiplied by the percentage calculated in subrule 21.13(2), if applicable, or a benefit as calculated in subrule 21.13(6). ~~See Iowa Code section 97B.49(1).~~

ITEM 33. Amend subrule 21.13(6) as follows:

21.13(6) Benefit formula.

a. For each active member retiring on or after July 1, ~~1982~~ 1994, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to ~~50~~ 60 percent of the ~~five~~ three-year average covered wage multiplied by a fraction of years of service. ~~For each active member retiring on or after July 1, 1986, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to 50 percent of the three-year average covered wage multiplied by a fraction of years of service not to exceed one.~~

~~For each active or inactive vested member retiring on or after July 1, 1990, with four or more complete years of service, the monthly benefit will be equal to one-twelfth of an amount equal to 52 percent of the highest three-year average covered wage multiplied by a fraction of years of service not to exceed one.~~

b. For all active and inactive vested members, the monthly retirement allowance shall be determined on the basis of the formula in effect on the date of the member's retirement. If the member takes early retirement, the benefit shall be adjusted as provided in subrule 21.13(2).

~~c. Commencing July 1, 1991, IPERS shall increase the percentage multiplier of the high three-year average covered wage by an additional 2 percent each July 1 until reaching 60 percent, contingent upon the trust fund's ability to absorb these increases within existing contribution rates as defined in Iowa Code sections 97B.11 and 97B.49.~~

~~d. In keeping with the mandates specified by Iowa Code sections 97B.49(5)"b" and 97B.49(16)"a"(3), the following are the increases in the benefit formula put into effect by IPERS:~~

- ~~o Effective July 1, 1991 - 54%~~
- ~~o Effective July 1, 1992 - 56%~~
- ~~o Effective July 1, 1993 - 57.4%~~
- ~~o Effective July 1, 1994 - 60%~~

~~e. c. Effective July 1, 1996, in addition to the 60 percent multiplier identified above, members who retire with years of service in excess of their "applicable years" shall have the percentage multiplier increased by 1 percent for each year in excess of their "applicable years," not to exceed an increase of 5 percent. For regular members, "applicable years" means 30 years; for protection occupation members, "applicable years" means 25 years; for sheriffs, deputy sheriffs, and airport firefighters, "applicable years" means 22 years. Effective July 1, 1998, sheriffs, deputy sheriffs, and airport firefighters who retire with years of service in excess of their applicable years shall have their percentage multiplier increased by 1.5 percent for each year in excess of their applicable years, not to exceed an increase of 12 percent.~~

ITEM 34. Amend subrule 21.13(7), paragraph "a," first and second paragraphs, as follows:

a. "Three-year average covered wage" means a member's covered calendar year wages averaged for the highest three years of the member's service. However, if a member's final quarter of a year of employment does not occur at the end of a calendar year, IPERS may determine the wages for

the third year by computing the final quarter or quarters of wages to complete the year. The computed year wages shall not exceed the maximum covered wage in effect for that calendar year. *Furthermore, for members whose first month of entitlement is January of 1999 or later, the computed year shall not exceed the member's highest actual calendar year of covered wages by more than 3 percent.*

~~For members whose first month of entitlement is prior to January 1995, the final year will be computed as follows: Wages from the highest quarter or quarters not being used in the selection of the three highest years shall be combined with the final quarter or quarters of the member's service to create a final year. For members whose first month of entitlement is July 1992 through December 1994, if the final quarter of wages reduces the three-year average covered wage, the wages for that quarter will not be used. The member will receive credit for the quarter of service. If, however, the final quarter is the first quarter of a calendar year, the wages must be used in order to compute a year.~~

ITEM 35. Amend paragraph 21.13(8)"a" as follows:

a. The initial monthly benefit for the retiree will be calculated utilizing the highest three calendar years of wages that have been reported as of the member's retirement. When the final quarter(s) of wages is reported for the retired member, a recalculation of benefits will be performed by IPERS to determine if the "computed year" as described in Iowa Code section ~~97B.41(18)~~ 97B.1A(23) and 581 IAC 21.13(7), or the final calendar year, is to be used in lieu of the lowest of the three calendar years initially selected. In cases where the recalculation determines that the benefit will be changed, the adjustment in benefits will be made retroactive to the first month of entitlement. The wages for the "computed year" shall not exceed the highest covered wage ceiling in effect during the member's period of employment.

ITEM 36. Adopt new paragraph 21.13(9)"f" as follows:

f. Effective January 1, 1999, the monthly allowance of certain retired members and their beneficiaries, including those whose monthly allowance was increased by the operation of paragraphs "a" to "e" above, shall be increased. If the member retired from the system before July 1, 1986, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 15 percent. If the member retired from the system on or after July 1, 1986, and before July 1, 1990, the monthly allowance currently being received by the member or the member's beneficiary shall be increased by 7 percent.

ITEM 37. Amend subrule 21.13(10), paragraphs "a" and "b," as follows:

a. Eligibility. Effective July 1, 1996, members having both regular and special service credit (as defined in Iowa Code sections ~~97B.41(16)~~ and ~~97B.41(21)~~ section 97B.1A(21)) shall receive the greater of the benefit amount calculated under this subrule, or the benefit amount calculated under the applicable nonhybrid benefit formula.

(1) Members who have a combined total of 16 quarters of service may utilize the hybrid formula.

(2) Members who have both types of special service under Iowa Code sections ~~97B.49(16)"a" and "b,"~~ section 97B.1A(21) but do not have any regular service, may utilize the hybrid formula.

(3) The following classes of members are not eligible for the hybrid formula:

1. Members who have only regular service credit.

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2. Members who have 22 years of sheriff/deputy sheriff/airport firefighter service credit (as defined under Iowa Code section 97B.49(16)“b”) 97B.49C.

3. Members who have 25 years of protection occupation service credit (as defined in Iowa Code section 97B.49(16)“d”) 97B.49B.

4. Members who have 30 years of regular service.

5. Members with less than 16 total quarters of service.

b. Assumptions. IPERS shall utilize the following assumptions in calculating benefits under this subrule.

(1) The member's three-year average covered wage shall be determined in the same manner as it is determined for the nonhybrid formula.

(2) Increases in the benefit formula under this subrule shall be determined as provided under Iowa Code section 97B.49(17)“c”(2) 97B.49D. The percentage multiplier shall only be increased for total years of service over 30.

(3) Years of service shall be utilized as follows:

1. Quarters which have two or more occupation class codes shall be credited as the class that has the highest reported wage for said quarter. A member shall not receive more than one quarter of credit for any calendar quarter, even though more than one type of service credit is recorded for that quarter.

2. Quarters shall not be treated as special service quarters unless the applicable employer and employee contributions have been made.

ITEM 38. Amend subrule 21.13(10), final unnumbered paragraph, as follows:

If the sum of the percentages obtained by dividing the applicable percentage multiplier by 22, 25, and 30 and then multiplying those percentages by years of service credit exceeds the applicable percentage multiplier for that member, the percentage obtained above for each class of service shall be subject to reduction so that the total shall not exceed the member's applicable percentage multiplier in the order specified in paragraph “c,” subparagraph (3), of this subrule.

ITEM 39. Amend rule 581—21.13(97B), implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 97B.41(18) 97B.1A(23), 97B.47, and 97B.49 and 97B.49A to 97B.51.

ITEM 40. Amend subrule 21.14(2) as follows:

21.14(2) If a member is vested upon termination, interest will continue to accrue through the month preceding the month of payment of the refund or, in the case of retirement benefits, through the month preceding the first month of entitlement. For periods ending prior to July 1, 1995, if a member is not vested upon termination, interest will cease to accrue on termination of covered employment for as long as the member remains inactive. For periods beginning July 1, 1995, interest will cease to accrue if a member is not vested upon termination of employment for as long as the member is inactive or nonvested. A member automatically becomes vested upon the attainment of the age of 55. Effective July 1, 1990, in the case of a member's death, interest shall be credited to a member's account until the month in which payment is made, unless IPERS determines that a dispute among alleged heirs exists, in which case the amount shall be placed in a non-interest-bearing account. Interest shall not be credited to a member's account if the wages were reported in error. Effective July 1, 1995, interest will be credited to an inactive nonvested member's account as provided in Iowa Code section 97B.70, beginning on the first date thereafter

that such a member becomes vested as provided in Iowa Code section 97B.41(19) 97B.1A(24).

ITEM 41. Adopt new subrules 21.14(3) and 21.14(4) as follows:

21.14(3) Interest shall accrue on the undistributed accumulated contributions of all members, including those of inactive nonvested members, and on the undistributed accumulated contributions of deceased members that are payable under Iowa Code section 97B.52(1). No interest shall be credited to any other death benefit payable under Iowa Code chapter 97B. The provisions of this subrule crediting interest to the undistributed accumulated contributions of inactive nonvested members shall not become effective until January 1, 1999.

21.14(4) Effective July 1, 1998, interest on the undistributed accumulated contributions described in subrule 21.14(3) shall accrue through the quarter preceding the quarter in which any distribution is made. If IPERS determines that a dispute among alleged heirs exists, the amount of the death benefits shall be placed in a non-interest-bearing account.

ITEM 42. Amend rule 581—21.16(97B) as follows:

581—21.16(97B) Approved leave periods.

21.16(1) ~~A~~ *Effective July 1, 1998, a member's service is not deemed interrupted while a member is on approved leave of absence not exceeding 12 months a leave of absence that qualifies for protection under the Family and Medical Leave Act of 1993 (FMLA), or would qualify but for the fact that the type of employment precludes coverage under the FMLA, or during the time a member is engaged during military service for which the member is entitled to receive credit under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) (38 U.S.C. Sections 4301 to 4333).*

21.16(2) Reentry into public employment by an employee on military leave can be achieved if the individual accepts employment with a covered employer. Reemployment may begin anytime within 12 months of the individual's discharge from military service or, if longer, within the period provided under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Sections 4301 to 4333) *USERRA*. Upon reemployment the member shall receive credit for all service to which the member is entitled pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Sections 4301 to 4333) *USERRA*.

Notwithstanding any provision of Iowa Code chapter 97B or these rules to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Internal Revenue Code Section 414(u).

For reemployments initiated on or after December 12, 1994, a member shall be treated as receiving compensation for each month during the member's period of military service equal to the member's average monthly compensation during the 12-month period immediately preceding the period of military service or, if shorter, the member's average monthly compensation for the period immediately preceding the period of military service. The member's deemed compensation during the period of military service shall be taken into consideration in determining a member's make-up contributions, if any, and the member's high three-year average covered wage.

For reemployments initiated on or after December 12, 1994, make-up contributions shall be permitted with respect

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to employee contributions that would have been made during the period of military service if the member had actually been in covered employment during the period earning the deemed compensation provided for under this subrule. Make-up contributions shall be permitted during the five-year period that begins on the date of reemployment or, if less, a period equal to three times the period of military service.

The member shall request the foregoing make-up contributions (except contributions for periods prior to January 1, 1995, which shall be made as posttax contributions) on forms to be filed with the employer, which shall forward a copy to the system. Make-up contributions shall be made as pretax contributions under Internal Revenue Code Section 414(h)(2). Employers must comply with a member's request to begin make-up contributions during a period not exceeding that described in the preceding paragraph and shall forward said amounts to the system in the same manner as provided for pick-up contributions under Iowa Code section 97B.11A. An election to make up employee contributions under this rule shall be irrevocable.

~~21.16(3) Effective for leaves of absence beginning on or after July 1, 1998, an eligible member must make contributions to the system in order to receive service credit for the period of the leave (except for leaves under subrule 21.16(1) above). Contributions may be made in increments of one quarter or more. Credit shall be given for a period of vacation or leave of absence authorized by the employer not to exceed 12 months. If a period of vacation or leave of absence exceeds 12 months, credit will be given for the first 12 months only. However, if a period of vacation or leave of absence was granted for 12 months or less, and renewed for 12 months or less, all periods of vacation or leave of absence shall be included as membership service, even though all periods added together exceed 12 months.~~

21.16(4) Reentry into public employment by an employee on a leave of absence under subrule 21.16(1) can be achieved by the employee by accepting employment with any public employer, provided that there is no any interruption between the end of the period of leave of absence and reentry into public employment meets the requirements of the FMLA, USERRA and this rule.

21.16(5) Credit for a leave of absence shall not be granted and cannot be purchased for any time period which begins after or extends beyond an employee's termination of employment as certified by the employer. This includes a certification of termination of employment made by an employer on a refund application. Employers shall be required to certify all leaves of absence for which credit is being requested using an affidavit furnished by IPERS and accompanied by a copy of the official record(s) which authorized the leave of absence. The provisions of this subrule denying credit for leaves of absence in certain situations shall apply to leaves of absence that begin on or after the effective date of this subrule, which shall be November 27, 1996. The provisions of the subrule requiring employers to certify all leaves of absence using an affidavit furnished by IPERS shall apply to all requests for leave of absence credit filed after November 27, 1996, regardless of when the leave of absence was granted.

21.16(6) For a leave of absence beginning on or after July 1, 1998, and before July 1, 1999, the service purchase cost shall be equal to the employer and employee contributions and interest payable for the employee's most recent year of covered wages, adjusted by the inflation factor used in rule 21.24(97B). For a leave of absence beginning on or after July 1, 1999, the service purchase cost shall be the ac-

tuarial cost, as certified by IPERS' actuary. In calculating the actuarial cost of a service purchase under this subrule, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.

This rule is intended to implement Iowa Code section ~~97B.41(8) and (15) sections 97B.1A(8), 97B.1A(8A), 97B.1A(19) and 97B.81.~~

ITEM 43. Amend subrule 21.18(4) as follows:

~~21.18(4)~~ The first month of entitlement of a member qualifying under the rule of ~~92~~ 88 (see subrule 21.11(3)) shall be the first of the month when the member's age as of the last birthday and years of service equal ~~92~~ 88. The fact that a member's birthday allowing a member to qualify for the rule of ~~92~~ 88 is the same month as the first month of entitlement does not affect the retirement date.

ITEM 44. Amend rule 581—21.19(97B) as follows:

581—21.19(97B) Wage-earning disqualifications for retired members.

21.19(1) Effective July 1, ~~1996~~ 1998, the monthly benefit payments for a member under the age of 65 who has a bona fide retirement and is then reemployed in covered employment shall be reduced by 50 cents for each dollar the member earns in excess of the amount of remuneration permitted for a calendar year for a person under the age of 65 before a reduction in federal Social Security retirement benefits is required, or \$12,000, whichever is greater. The foregoing reduction shall apply only to IPERS benefits payable for the applicable year that the member has reemployment earnings, and after the earnings limit has been reached. Said reductions shall be applied as provided in subrule 21.19(5) 21.19(2) below. For periods prior to July 1, 1996, the wage earning limitations for retired members are as follows.

For periods prior to July 1, 1996, monthly benefit payments for retired members under the age of 65 shall cease in the month the member is paid an amount in covered employment sufficient to increase the member's calendar year earnings equal to or greater than an amount determined by law. Effective January 1, 1997, this amount is \$8,640. Effective January 1, 1996, to January 1, 1997, the amount was \$8,280. Effective January 1, 1992, to January 1, 1996, the amount was \$7,440. From January 1, 1988, to January 1, 1990, the amount was \$6,120. From January 1, 1990, until January 1, 1992, the amount was \$6,840. Amounts earned outside of covered employment are disregarded for the purpose of this rule.

Effective January 1, 1991, this earnings limitation does not apply to covered employment in an elective office.

~~21.19(2)~~ For periods prior to July 1, 1996, monthly benefit payments shall resume the month following the month in which a member, previously disqualified pursuant to subrule 21.19(1), terminates covered employment.

~~21.19(3)~~ For periods prior to July 1, 1996, monthly benefit payments to the member shall resume in January regardless of the member's covered earnings in any previous calendar year, unless the member is disqualified pursuant to subrule 21.19(1).

~~21.19(4)~~ A member aged 65 or older who has completed at least four full calendar months of bona fide retirement and is later reemployed in covered employment shall not be subject to any wage-earning disqualification.

~~21.19(5)~~ 21.19(2) Beginning on or after July 1, 1996, the retirement allowance of a member subject to reduction pursuant to subrule 21.19(1) shall be reduced as follows.

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a. A member's monthly retirement allowance in the next following calendar year shall be reduced by the excess amounts earned in the preceding year divided by the number of months remaining in the following calendar year after the excess amount has been determined. A member may elect to make repayment of the overpayments received in lieu of having the member's monthly benefit reduced. Elections to make installment payments must be accompanied by a repayment agreement signed by the member and IPERS. If the monthly amount to be deducted exceeds a member's monthly retirement allowance, the member's monthly allowance shall be withheld in its entirety until the overpayment is recovered. If a member dies and the full amount of overpayments determined under this subrule has not been repaid, the remaining amounts shall be deducted from the payments to be made, if any, to the member's designated beneficiary or contingent annuitant. If the member has selected an option under which there are no remaining amounts to be paid, or the remaining amounts are insufficient, the unrecovered amounts shall be a charge on the member's estate.

b. Employers shall be required to complete IPERS wage reporting forms for reemployed individuals which shall reflect the prior year's wage payments on a month-to-month basis. These reports shall be used by IPERS to determine the amount which must be recovered to offset overpayments in the prior calendar year due to reemployment wages.

c. A member may elect in writing to have the member's monthly retirement allowance suspended in the month in which the member's remuneration exceeds the amount of remuneration permitted under this rule in lieu of receiving a reduced retirement allowance under paragraph "a" of this subrule. If the member's retirement allowance is not suspended timely, the overpayment will be recovered pursuant to paragraph "a" of this subrule. The member's retirement allowance shall remain suspended until the earlier of January of the following calendar year or the member's termination of covered employment. The member's election shall remain binding until revoked in writing.

~~21.19(6)~~ **21.19(3)** A member who is reemployed in covered employment after retirement may, after again retiring from employment, request a recomputation of benefits. The member's retirement benefit shall be increased if possible by the addition of a second annuity, which is based on years of reemployment service, reemployment covered wages and the benefit formula in place at the time of the recomputation. A maximum of 30 years of service is creditable to an individual retiree. If a member's combined years of service exceed 30, a member's initial annuity may be reduced by a fraction of the years in excess of 30 divided by 30. The second retirement benefit will be treated as a separate annuity by IPERS. Any contributions that cannot be used in the recomputation of benefits shall be refunded to the employee and the employer.

~~Notwithstanding the foregoing~~ *Effective July 1, 1998*, a member who is reemployed in covered employment after retirement may, after again terminating employment, elect to receive a refund of the employee and employer contributions made during the period of reemployment in lieu of a second annuity. If a member requests a refund in lieu of a second annuity, the related employer contributions service credit shall be forfeited.

21.19(4) *In recomputing a retired member's monthly benefit, IPERS shall use the following assumptions.*

a. *The member cannot change option or beneficiary with respect to reemployment period.*

b. *If the reemployment period is less than four years, the money purchase formula shall be used to compute the benefit amount.*

c. *If the reemployment period is four or more years, the benefit formula in effect as of the first month of entitlement (FME) for the reemployment period shall be used. If the FME is July 1998 or later, and the member has more than 30 years of service, including both original and reemployment service, the percentage multiplier for the reemployment period only will be at the applicable percentage (up to 65 percent) for the total years of service.*

d. *If a period of reemployment would increase the monthly benefit a member is entitled to receive, the member may elect between the increase and a refund of the employee and employer contributions without regard to reemployment FME.*

e. *If a member previously elected IPERS Option 1, is eligible for an increase in the Option 1 monthly benefits, and elects to receive the increase in the member's monthly benefits, the member's Option 1 death benefit shall also be increased if the investment is at least \$1,000. The amount of the increase shall be at least the same percentage of the maximum death benefit permitted with respect to the reemployment as the percentage of the maximum death benefit elected at the member's original retirement. Notwithstanding the foregoing, if the member's investment for the period of reemployment is less than \$1,000, the benefit formula for a member who originally elected new IPERS Option 1 shall be calculated under IPERS Option 3.*

f. *A retired reemployed member whose reemployment FME precedes July 1998 shall not be eligible to receive the employer contributions made available to retired reemployed members under Iowa Code section 97B.48A(4) effective July 1, 1998.*

This rule is intended to implement Iowa Code sections ~~97B.41~~ 97B.1A, 97B.45 and 97B.48A.

ITEM 45. Amend paragraph 21.24(2)"b" as follows:

b. A qualifying member who decides to purchase IPERS credit must make employer and employee contributions to IPERS for each calendar quarter of service allowed in this buy-in. This contribution shall be determined using the member's covered IPERS wages for the most recent full calendar year of IPERS coverage, the applicable rates established in Iowa Code sections 97B.11 and ~~97B.49~~, 97B.49B and 97B.49C, and multiplied by the number of quarters being purchased from other public employment. "Applicable rates" means the rates in effect during the most recent full calendar year for the types of service being purchased. A member must have at least two four quarters of reported wages in any calendar year before a buy-in cost may be calculated. ~~If the wages reported in the last calendar year do not represent four full quarters of service (e.g., because of a leave of absence, wages reported for partial quarter), IPERS will compute the wages for a full calendar year. A full calendar year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the full year. The value of this average quarter will be computed by selecting the highest wage year in the member's wage history and dividing the covered salary by four quarters. This value will be used in the most recent full calendar year for each quarter in which no wages were reported.~~

ITEM 46. Amend paragraph 21.24(2)"e" as follows:

e. ~~Prior to July 1, 1990, in order to qualify, the IPERS member had to have been a member of another state's retirement system, and was not eligible if the member was vested~~

PERSONNEL DEPARTMENT[581](cont'd)

~~under that other system. If the member did qualify, the member had to contribute the accumulated employer and employee contributions as defined in Iowa Code section 97B.41(2), for that same period of covered service under IPERS; and an amount equal to the accumulated interest on the employer and employee contributions that would have accrued if the member had been a member of the IPERS system earning the same wages as actually earned under the other system. The interest due was for the period from the date of service of the member in the other public retirement system to the date of payment of the contributions by the member equal to 2 percent plus the interest dividend rate applicable for each year. Partial buy-ins were not allowed prior to July 1, 1992, and the waiver provision in effect since July 1, 1990, did not require the acceptance of that waiver by the other public system until July 1, 1992. The requirement that the member can only buy in time "comparable to an IPERS covered position at the time" was added effective July 1, 1992.~~

The total amount paid will be added to the member's contributions and the years of service this amount represents will be added to the member's IPERS years of service. Effective January 1, 1993, the purchase will not affect the member's three-year average covered wage.

ITEM 47. Amend paragraph 21.24(2)"f" as follows:

~~f. Effective July 1, 1994, a vested or retired member must have membership service and covered wages paid in the current calendar year in order to be eligible for a service purchase. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-in, as certified by IPERS' actuary. In calculating the actuarial cost of a buy-in, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.~~

ITEM 48. Amend subrule 21.24(3) as follows:

~~21.24(3) IPERS buy-back. Effective July 1, 1996, only vested or retired members may buy back previously refunded IPERS credit. *The For the period beginning July 1, 1996, and ending June 30, 1999, an eligible member is required to make membership contributions equal to the accumulated contributions received by the member for the period of service being purchased plus accumulated interest and interest dividends. Effective July 1, 1999, an eligible member must pay the actuarial cost of a buy-back, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.*~~

Effective July 1, 1996, buy-backs may be made in increments of one or more calendar quarters. Prior to July 1, 1996, the member was required to repurchase the entire period of service and repay the total amount received plus accumulated interest and interest dividends.

~~For periods beginning January 1, 1991, and ending June 30, 1996, an active, vested or retired member who was a member of the system at any time on or after July 4, 1953, and who received a refund of the member's contributions for that period of membership service, could apply in writing to IPERS to buy back the refund and the quarters of service which it represents.~~

~~Prior to January 1, 1991, in order for a member to buy back previously refunded IPERS credit, the member had to meet the following qualifications:~~

~~(1) The refund of contributions had to represent a period of service between July 1, 1953, and June 30, 1973;~~

~~(2) The member could not have been vested at the time of the refund; and~~

~~(3) The member had to have at least 15 or more years of service, a figure which could include the amount of refunded time the member wished to buy back.~~

ITEM 49. Amend paragraph 21.24(5)"c" as follows:

~~c. The member must pay IPERS the combined employee and employer contribution amount determined using the member's covered wages for the most recent full calendar year at the applicable rates in effect for that year under Iowa Code sections 97B.11 and 97B.49, 97B.49B and 97B.49C for each year of the member's active duty service. A member must have at least two four quarters of reported wages in any calendar year before a buy-in cost may be calculated. If the wages reported in the last calendar year do not represent four full quarters of service (e.g., because of a leave of absence, wages reported for a partial quarter), IPERS will compute the wages for a full calendar year. A full calendar year will be created when the final quarter or quarters reported are combined with a computed average quarter to complete the full year. The value of this average quarter will be computed by selecting the highest wage year in the member's wage history and dividing the covered salary by four quarters. This value will be used in the most recent full calendar year for each quarter in which no wages were reported.~~

ITEM 50. Amend paragraph 21.24(5)"f" as follows:

~~f. Effective July 1, 1994, a vested or retired member must have membership service and covered wages paid in the current calendar year in order to be eligible for a service purchase. Effective July 1, 1999, an eligible member must pay the actuarial cost of a military service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.~~

ITEM 51. Adopt new paragraph 21.24(6)"d" as follows:

~~d. Actuarial cost. Effective July 1, 1999, an eligible member must pay 40 percent and the Iowa legislature shall pay 60 percent of the actuarial cost of a legislative service purchase, as certified by IPERS' actuary. In calculating the actuarial cost, the actuary shall assume that the member will retire at the earliest possible date after the service purchase is completed.~~

ITEM 52. Renumber subrule 21.24(9) as 21.24(11) and adopt new subrules 21.24(9) and 21.24(10) as follows:

~~21.24(9) Leaves of absence. Service credit for leaves of absence that begin on or after July 1, 1998, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase.~~

~~21.24(10) Service credit under Iowa Code section 97B.42A(4). Service credit for periods of time prior to January 1, 1999, when the member was employed in a position for which coverage could have been elected, but was not, may be purchased. The cost of such service purchases shall be calculated in the same manner as provided for buy-ins under subrule 21.24(2) above. In addition, a member must be vested or retired, and must have one calendar year of wages on file in order to make such a purchase. A member shall not be able to purchase service under this rule that was not eligible for optional coverage at the time of the employment.~~

ITEM 53. Adopt new rule 581—21.30(97B) as follows:

PERSONNEL DEPARTMENT[581](cont'd)

581—21.30(97B) Favorable experience dividend under Iowa Code section 97B.49F(2).

21.30(1) Allocation of favorable experience. The department shall annually allocate the system's favorable actuarial experience, if any, between the reserve account created under Iowa Code section 97B.49F(2) and the remainder of the retirement fund according to the following schedule.

<u>Years to Amortize Unfunded Liability</u>	<u>Percentage to FED Reserve</u>
20	0
19	5
18	6
17	7
16	8
15	9
14	11
13	14
12	17
11	20
10	23
9	27
8	31
7	36
6	42
5	49
4	57
3	66
2	77
1	90
0	100

The portion of the favorable actuarial experience, if any, that is not initially credited to the reserve account using the foregoing table, but which, if applied to the retirement fund, would result in the actuarial valuation of assets exceeding the actuarial accrued liability of the system based on the most recent annual actuarial valuation of the system, shall be credited to the reserve account.

21.30(2) Determination of applicable percentage. The department shall have sole discretion to determine the applicable percentages that will be used in calculating favorable experience dividends payable under this rule, if any, subject to the actuary's certification that the resulting favorable experience dividends meet the requirements of Iowa Code section 97B.49F(2) and this rule.

a. The department's annual applicable percentage target for calculating dividends under Iowa Code section 97B.49F(2) shall be equal to the applicable percentage used in calculating dividends payable to retirees under Iowa Code section 97B.49F(1). Notwithstanding the foregoing, the department may set a greater or lesser applicable percentage for calculating dividends under this rule depending on the

funding adequacy of the reserve account. In no event shall the applicable percentage exceed 3 percent.

b. In determining the annual applicable percentage, the department shall consider, but not be limited to, the value of the reserve account, distributions made from the reserve account in previous years, and the likelihood of future credits to and distributions from the reserve account. The department shall make its annual applicable percentage decisions using at least a rolling five-year period.

c. If for any year the department cannot afford an applicable percentage equal to that payable to retirees under Iowa Code section 97B.49F(1), the department may use applicable percentages in succeeding years that are higher than those used in calculating dividends for retirees under Iowa Code section 97B.49F(1) (but not in excess of 3 percent).

d. An applicable percentage in excess of the applicable percentage declared under Iowa Code section 97B.49F(1) made for catch-up purposes shall not reduce the funding of the reserve account below the amount the system's actuary determines is necessary to pay the maximum favorable experience dividend for each of the next five years, based on reasonable actuarial assumptions.

21.30(3) Calculation of FED for individual members and beneficiaries. A member must be retired for one full year to qualify for a favorable experience dividend. In determining whether a member has been retired one full year, the department shall count the member's first month of entitlement as the first month of the one-year period. The month in which the favorable experience dividend is payable shall be included in determining whether a member meets the eligibility requirements.

An eligible member's favorable experience dividend shall be calculated by multiplying the total monthly benefit payments received in the prior calendar year by the number of complete years the member has been retired or would have been retired if living on the date the dividend is payable, and by the applicable percentage set by the department. The number of complete years the member has been retired shall be determined by rounding down to the nearest whole year.

This rule is intended to implement Iowa Code section 97B.49F(2).

[Filed Emergency 11/25/98, effective 11/25/98]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8541A**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on November 17, 1998, emergency adopted amendments to Chapter 164, "Traffic Safety Improvement Program," Iowa Administrative Code.

These amendments transfer program administration from the Office of Program Management to the Engineering Division and change the deadline for accepting applications to enable earlier commitment of available funds.

In accordance with Iowa Code subsection 17A.4(2), the Department of Transportation finds that notice and public

TRANSPORTATION DEPARTMENT{761}(cont'd)

participation are unnecessary for Items 1, 2 and 4 because they simply correct the office responsible for the Traffic Safety Improvement Program.

Also under Iowa Code subsection 17A.4(2), the Department of Transportation finds that it is contrary to the public interest to delay implementation of Item 3 by going through the "normal" notice and public participation procedures. By changing the application deadline to January 1, the Department of Transportation will be able to provide improved budget coordination with local governments. The January 1 due date will allow the Department of Transportation to provide notice of the selected projects to local governments by midyear. This will assist local governments in preparing their following fiscal year budgets to ensure that local matching funds necessary to complete the selected projects will be included in their budgets.

In accordance with Iowa Code subparagraph 17A.5(2) "b"(2), the Department of Transportation finds that these amendments will confer a benefit on the public. Items 1, 2 and 4 will eliminate the confusion of incorrect office names. Item 3 allows earlier commitment of funds during the construction year, which will enable improvements to be made earlier.

Accordingly, these amendments became effective November 19, 1998.

These amendments are intended to implement Iowa Code section 312.2.

Rule-making actions:

ITEM 1. Amend rule 761—164.2(312) as follows:

761—164.2(312) Information and forms. Information, instructions and application forms may be obtained from: ~~Office of Program Management~~, *Engineering Division*, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1145 1557.

ITEM 2. Amend paragraph 164.9(1)"a" as follows:

a. The jurisdiction shall submit an original and three copies of the complete application to the ~~office of program management~~ *engineering division* at the address in rule 164.2(312). An application may be submitted at any time and shall be dated when received in the ~~office of program management~~ *engineering division*.

ITEM 3. Amend paragraph 164.9(1)"b" as follows:

b. All complete applications received before ~~November 1, 1988, or July 1 January 1~~ of each year ~~thereafter~~, shall be evaluated during the annual review of the transportation improvement program.

ITEM 4. Amend paragraph 164.9(1)"c" as follows:

c. If an application is incomplete, the department shall return the application to the applicant to be resubmitted when complete. A resubmitted application shall be dated when received in the ~~office of program management~~ *engineering division*.

[Filed Emergency 11/17/98, effective 11/19/98]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8567A**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.1(5) and 261.3, the College Student Aid Commission amends Chapter 13, "Iowa Vocational-Technical Tuition Grant Program," Iowa Administrative Code.

The adopted amendments revise the Vocational-Technical Tuition Grant Program by incorporating additional eligibility and second priority applicants as required by the 1998 General Assembly in 1998 Iowa Acts, chapter 1215.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1998, as **ARC 8267A**. No public comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code sections 261.1(5), 261.3 and Iowa Code Supplement section 261.17 as amended by 1998 Iowa Acts, chapter 1215.

These amendments will become effective January 20, 1999.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [13.1] is being omitted. These amendments are identical to those published under Notice as **ARC 8267A**, IAB 8/26/98.

[Filed 11/25/98, effective 1/20/99]
[Published 12/16/98]

[For replacement pages for IAC, see IAC Supplement 12/16/98.]

ARC 8569A**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission adopts Chapter 35, "Industrial Technology Forgivable Loan Program," Iowa Administrative Code.

The new chapter will establish rules for administering the Industrial Technology Forgivable Loan Program, which was established by the 1998 Iowa Legislature in 1998 Iowa Acts, chapter 1215.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1998, as **ARC 8266A**. No public comments were received. These rules are identical to those published under Notice.

The new chapter was adopted in final form on November 17, 1998.

This new chapter will become effective January 20, 1999.

This chapter is intended to implement 1998 Iowa Acts, chapter 1215.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text

of these rules [ch 35] is being omitted. These rules are identical to those published under Notice as **ARC 8266A**, IAB 8/26/98.

[Filed 11/25/98, effective 1/20/99]
[Published 12/16/98]

[For replacement pages for IAC, see IAC Supplement 12/16/98.]

ARC 8568A**COLLEGE STUDENT AID
COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 261.3 and 261.37(5), the College Student Aid Commission adopts Chapter 36, "Governor Terry E. Branstad Iowa State Fair Scholarship Program," Iowa Administrative Code.

This new chapter will establish rules for administering the Governor Terry E. Branstad Iowa State Fair Scholarship Program, which was assigned to the Commission by the 1998 Iowa Legislature in 1998 Iowa Acts, chapter 1215.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 1998, as **ARC 8265A**. No public comments were received on these rules. These rules are identical to those published under Notice.

The new chapter was adopted in final form on November 17, 1998.

This new chapter will become effective January 20, 1999.

This chapter is intended to implement 1998 Iowa Acts, chapter 1215.

The following **new** chapter is adopted.

CHAPTER 36**GOVERNOR TERRY E. BRANSTAD IOWA STATE
FAIR SCHOLARSHIP PROGRAM**

283—36.1(77GA, ch1215) Governor Terry E. Branstad Iowa state fair scholarship program. The Governor Terry E. Branstad Iowa state fair scholarship program is a privately funded scholarship program for Iowa residents who actively participate in the Iowa state fair and enroll as undergraduate students in an eligible institution.

36.1(1) Definitions. As used in this chapter:

"Eligible institution" means an institution of higher learning under the control of the state board of regents, a North Central Association of Colleges (NCA) accredited independent institution as defined in Iowa Code section 261.9, or a state-supported community college.

"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).

36.1(2) Eligibility for scholarship.

a. An applicant must be an Iowa resident who has graduated from an accredited secondary school in Iowa.

b. An applicant for assistance under this program must enroll at an eligible institution.

c. An applicant must release test scores, rank in class, grade point average, and need analysis information to the commission on forms specified by the commission, by the deadline date determined by the commission. In addition, each applicant must provide the following information, as stated in the application instructions: essay, description of

COLLEGE STUDENT AID COMMISSION[283](cont'd)

state fair participation, description of school and community activities, description of community services, and references.

36.1(3) A panel of judges representing the following agencies will choose recipients: governor's staff, the Iowa state fair board, the Iowa department of education, the Iowa department of agriculture and land stewardship, and the Iowa college student aid commission.

36.1(4) Monetary award.

a. The maximum award to an eligible student is \$1,000, or the amount of the student's established financial need, whichever is less.

b. A maximum of four recipients will be chosen each year. The selection committee may select fewer recipients in any given year.

c. A scholarship of up to \$2,000 will be awarded each year to the Iowa state fair queen.

d. The Governor Terry E. Branstad Iowa state fair scholarship fund will be established in the office of the state treasurer. Only the interest earned on the scholarship fund will be used for scholarship awards.

36.1(5) Restrictions. An applicant 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 this scholarship. 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 1998 Iowa Acts, chapter 1215.

[Filed 11/25/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8552A**ECONOMIC DEVELOPMENT,
IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts a new Chapter 11, "Certified School to Career Program," Iowa Administrative Code.

Notice of Intended Action was published in the September 9, 1998, Iowa Administrative Bulletin as **ARC 8312A**. The IDED Board adopted the new rules on November 19, 1998.

The chapter implements a new program authorized by 1998 Iowa Acts, chapter 1225, sections 15 to 21. The Certified School to Career Program is designed to provide a workplace context for classroom training at the postsecondary level by bringing educators and employers together to design an educational program that includes classroom training that is reinforced with on-the-job experiences. Additionally, the program assists participants in determining a career field, financing postsecondary education and accessing Iowa employment. The new chapter describes eligibility require-

ments, sets minimum agreement terms, establishes procedures for accessing funds, and explains how participating businesses can claim the payroll expenditure refund, which is authorized by the statute.

A public hearing to receive comments about the proposed new chapter was held on October 29, 1998. As a result of comments received, the following changes were made to the proposed rules:

1. A new definition, "Registered apprenticeship program," has been added. This definition is needed in order to clarify that tuition for registered apprenticeship programs may be funded by accumulated ERISA funds. Wherever there is a reference to ERISA funds being used to pay for eligible postsecondary education institution expenses, the registered apprenticeship programs have been added. This change occurs in subrules 11.3(2) and 11.3(3), and paragraphs 11.3(8)"a," 11.3(8)"b" and 11.3(8)"d."

2. In paragraph 11.3(8)"b," the forms of financial aid that may be subtracted from the tuition cost to compute the amount that must be deposited into the ERISA fund were expanded to include tax credits.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, sections 15 to 21.

These rules will become effective on January 20, 1999.

The following chapter is adopted.

Adopt the following new chapter:

CHAPTER 11**CERTIFIED SCHOOL TO CAREER PROGRAM**

261—11.1(77GA,ch1225) Purpose. The purpose of the certified school to career program is to provide an articulated sequential program of study, including secondary and postsecondary components (with the option of registered apprenticeship), resulting in a diploma, associate's degree, or other credential and utilizing paid work site internships in partnership with an employer to prepare students for specific employment. Additionally, the program assists students in preparing for a career field and provides postsecondary education financing and employment opportunities in Iowa.

261—11.2(77GA,ch1225) Definitions.

"Certified school to career program" or "certified program" means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 CFR Subtitle A, Part 29, which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18, or a program approved by the state board of education, in conjunction with the department of economic development, as meeting the standards enumerated in 1998 Iowa Acts, chapter 1225, section 17, that integrates a secondary school curriculum with private sector job training which places students in job internships, which is designed to continue into postsecondary education that will result in new skills, add value to the wage-earning potential of participants and increase their long-term employability in the state, and which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18.

"Department" means the Iowa department of economic development.

"Eligible postsecondary institution" means an institution as defined in Iowa Code section 261C.3.

"Employer" means the person or organization that agrees to provide the paid internship; provide a mentor for the on-the-job training component of the education program; participate in curriculum development that identifies knowledge, skills and behaviors needed in the workplace; oversee the

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

trust account and payroll expenditure fund; and employ the participant for a minimum of two years after completion of the participant's postsecondary education.

"Participant" means an individual between the ages of 16 and 24 who is enrolled in a public or private secondary school or postsecondary institution and who initiated participation in a certified school to career program as part of secondary school education.

"Payroll expenditures" means the base wages actually paid by an employer to a participant plus the amount held in trust to be applied toward the participant's postsecondary education.

"Registered apprenticeship program" means a program registered with the U.S. Bureau of Apprenticeship and Training which contains the terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including the requirement for a written apprenticeship agreement.

"Sponsor" means any person, association, committee, or organization operating a school to career program and in whose name the program is or will be registered or approved.

261—11.3(77GA,ch1225) Certified program work site agreement. The certified program shall be conducted pursuant to a signed written agreement between each participant, parent or guardian, educational institution or sponsor, as appropriate, and the employer, which contains at least the following provisions:

11.3(1) Employer, participant and parent/guardian signatures. The names and signatures of the participant, sponsor or employer, and the signature of a parent or guardian if the participant is a minor are required.

11.3(2) Educational institution or sponsor acknowledgment. The secondary school or sponsor and the eligible postsecondary institution or registered apprenticeship program that the participant attends or has chosen to attend must provide an acknowledgment that will be attached to the agreement. The letter of acknowledgment must detail enrollment criteria and provide an acknowledgment that it is likely the participant will be accepted into the program of choice, given that the participant meets established admission criteria.

11.3(3) Designation of a career field. A description of the career field in which the participant is to be trained and the beginning date and duration of the training shall be included. The corresponding program of study that the participant plans to enter at the eligible postsecondary institution or through the registered apprenticeship program provider must also be designated.

11.3(4) Assignment of a mentor. The employer shall identify a mentor for the participant. The mentor's occupation should be related to the participant's selected career field.

11.3(5) Employer's agreement to pay a base wage. The employer shall agree to provide paid employment, at a base wage, for the participant during the summer months after the participant's junior and senior years in high school and after the participant's first year of postsecondary education.

11.3(6) Minimum academic standards. The participant and employer shall agree upon set minimum academic standards that must be maintained through the participant's secondary and postsecondary education.

11.3(7) Compliance with workplace laws and regulations. The base wage paid to the participant for hours worked shall not be less than the minimum wage prescribed by Iowa law or the federal Fair Labor Standards Act, whichever is applicable at the time the work is performed. The program shall also comply with all state and federal laws per-

taining to the workplace, including equal employment opportunity and accident and liability insurance requirements.

11.3(8) Additional amount to be held in an Employee Retirement Income Security Act (ERISA) fund to pay for postsecondary tuition. ERISA is described in Title 19 of the United States Code, Chapter 18.

a. In addition to the base wage paid to the participant, the employer shall pay an additional sum to be held in trust and applied toward the participant's postsecondary education required for completion of the certified program. The additional amount must be not less than an amount determined by the department to be sufficient to provide payment of tuition expenses toward completion of not more than two academic years of the required postsecondary education component of the certified program at an Iowa community college or an Iowa public or private college or university or through a registered apprenticeship program. The additional amount specified in this paragraph may include other related postsecondary educational expenses at the discretion of the employer.

b. The eligible postsecondary institution or registered apprenticeship program provider that is identified in the agreement shall compute the anticipated tuition amount for the first two years for the postsecondary program of study identified in the agreement. If the postsecondary program of study is shorter than two years in length, the entire tuition amount shall be identified. Any financial aid in the form of grants or tax credits, and excluding loans, that is anticipated or has already been granted to the participant, may be subtracted from the program tuition costs computed by the eligible postsecondary institution or registered apprenticeship program provider. The resulting tuition costs shall be divided by the number of hours that the participant is anticipated to work for the employer over the three summer internships to determine the hourly amount that the employer must pay in addition to the base wage. The amount set aside for postsecondary tuition may be renegotiated at any time during the certified program based upon additional information that is obtained about the tuition costs, financial aid or other items that will affect the amount of funding needed to cover two years of postsecondary tuition, or all tuition expenses for programs shorter than two years in length, in the selected program. If, for circumstances at the discretion of the participant and beyond the control of the employer, the participant misses hours of work that cannot be made up, the employer is not responsible for funding the entire two years of postsecondary tuition.

c. This additional amount shall be held in trust by the employer for the benefit of the participant. Payment into an ERISA-approved fund for the benefit of the participant shall satisfy this requirement. The specific fund shall be specified in the agreement.

d. Payment of postsecondary tuition expenses from the ERISA fund established through this program shall be made directly to the postsecondary institution or registered apprenticeship program provider unless otherwise designated in the certified program agreement.

e. The certified program work site agreement shall specify any tax implications that the participant may encounter as a result of the accumulation of ERISA funds.

11.3(9) Participant's agreement to work for the employer. The participant must agree to work for the employer for at least two years following the completion of the participant's postsecondary education as required by the certified program. However, the agreement may provide for additional education and work commitments beyond the two years.

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

This agreement may be contingent upon the employer's willingness to provide full-time, nonseasonal employment with industry standard wages and benefits.

11.3(10) Repayment of tuition funding. If the participant does not complete the two-year employment obligation, the participant's agreement to repay to the employer the amount paid by the employer toward the participant's postsecondary education expenses pursuant to subrule 11.3(8) shall provide that:

a. If a participant does not complete the certified program identified by the agreement after entering the postsecondary component of the school to career education program, any unexpended funds being held in trust for the participant's postsecondary education shall be paid back to the employer. In addition, the participant must repay to the employer amounts paid from the trust which were expended on the participant's behalf for postsecondary education.

b. If a participant selects a different career field and chooses not to complete the certified program identified in the agreement prior to entering the postsecondary component of the education program, one-half of the moneys being held in trust for the participant's postsecondary education shall be paid to a postsecondary education institution as defined in Iowa Code section 261C.3 of the participant's choice to pay tuition or expenses of the participant. The other one-half of the trust moneys shall be paid back to the employer. Any moneys to be transferred for the benefit of the participant which are not transferred within five years for purposes of education at the designated postsecondary institution shall be paid back to the employer.

c. If the participant elects to change the participant's postsecondary education choice, but agrees to fulfill the training and employment conditions in the certified program work site agreement, the program agreement shall be modified by consent of the participant, sponsor, parent or guardian, if applicable, employer representative and representatives of the newly selected postsecondary educational entity.

d. If the employer does not offer full-time, permanent employment in the career field designated in the agreement that is consistent with industry standard wages and benefits, the participant shall not be required to make repayment to the employer.

e. If a participant terminates full-time, permanent employment that offers a wage and benefit package consistent with industry standards prior to the two-year time period, the participant shall repay postsecondary education expenses to the employer in whole or in part.

f. If the employer permanently terminates employment of the participant and unemployment insurance is awarded, no repayment of the tuition assistance funds shall be required.

11.3(11) Additional tuition allowance. Employers may, at their discretion, pay participants an additional amount that will cover more than two years of postsecondary tuition.

11.3(12) Documentation of certified program. Documentation of the internship's being part of registered apprenticeship program under 29 CFR Subtitle A, Part 29, which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18, or a program approved by the state board of education must be part of the agreement.

11.3(13) Certified program work site agreement submittal. The certified program work site agreement must be submitted to the department for approval prior to the beginning of the internship. The department shall review the agreement and provide a letter of approval or denial within 30 days of receipt of the agreement.

261—11.4(77GA, ch1225) Payroll expenditure refund.

11.4(1) Eligible Iowa payroll expenditure refund. An Iowa employer who employs a participant in a certified school to career program may claim a refund of 20 percent of the employer's payroll expenditures for each participant in the certified program. The refund is limited to the first 400 hours of payroll expenditures per participant for each calendar year the participant is in the certified program, not to exceed three years per participant. In order to receive the refund, an employer must submit a finalized certified program work site agreement to the department and receive approval for the program prior to the participant's beginning work for the business.

11.4(2) Claim submittal process. To receive a refund under subrule 11.4(1) for a calendar year, the employer shall file the claim by July 1 of the following calendar year. Claims that are not received by July 1 of the calendar year following the payroll expenditure shall not receive a refund. The claim shall be filed on forms provided by the department of economic development and the employer shall provide such information regarding the employer's participation in a certified school to career program as the department may require. If the amount appropriated to the certified school to career program in any given fiscal year is insufficient to pay all of the refund claims for the applicable calendar year, each claimant shall receive a proportion of the claimant's refund equal to the ratio of the amount appropriated to the total amount of refund claims. Any unpaid portion of a claim shall not be paid from a subsequent fiscal year appropriation. The participant's social security number will be required for purposes of program evaluation.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, sections 15 to 21.

[Filed 11/20/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8577A

EDUCATIONAL EXAMINERS BOARD [282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The amendment adds provisions for a two-year administrator exchange license, which is similar to the two-year exchange license currently provided for instructional staff.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 1998, as **ARC 8314A**. A public hearing was held on October 8, 1998. No one appeared at the hearing and other comments received were favorable.

The amendment remains the same as that published under Notice.

The Board of Educational Examiners adopted this amendment on November 6, 1998.

This amendment will become effective on July 1, 1999.

This amendment is intended to implement Iowa Code chapter 272.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

The following amendment is adopted.

Adopt **new** rule 282—14.25(272) as follows and renumber existing rules 282—14.25(272) to 282—14.32(272) as 282—14.26(272) to 282—14.33(272).

282—14.25(272) Two-year administrator exchange license.

14.25(1) A two-year nonrenewable exchange license may be issued to an individual under the following conditions. The individual:

a. Has completed a state-approved teacher education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

b. Has completed a state-approved administrator education program in a college or university approved by the state board of education or the state board of educational examiners in the individual's home state.

c. Holds a valid regular administrative certificate or license.

d. Is not subject to any pending disciplinary proceedings in any state.

e. Meets the experience requirements for the administrative endorsements. Verified successful completion of five years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of eight years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that three years were as a building principal or other PK-12 districtwide or area education agency administrator.

14.25(2) Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrative licensure was completed.

14.25(3) Each individual receiving the two-year exchange license will have to complete any identified licensure deficiencies in order to be eligible for a regular educational and administrative license in Iowa.

[Filed 11/30/98, effective 7/1/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8550A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby adopts amendments to Chapter 6, "Appeal Procedures," Iowa Administrative Code.

The amendments in Chapter 6 eliminate the need for a hearing panel on routine hearings, allow the filing of appeals to be accomplished by facsimile, and allow the administrative law judge to grant rehearings to eliminate the present requirement that the State Board be convened in a special meeting to grant a rehearing if the 20-day period elapses before a regularly scheduled board meeting.

Notice of Intended Action was published in the October 7, 1998, Iowa Administrative Bulletin as **ARC 8377A**. No public hearing was held, but two written comments were received. These amendments are identical to the Notice of Intended Action except for changes in the wording to expand the grounds for granting a rehearing and to clarify who may grant a rehearing.

These amendments are intended to implement Iowa Code section 290.1.

These amendments will become effective January 20, 1999.

The following amendments are adopted.

ITEM 1. Amend rule **281—6.1(256)** by rescinding the definition of "Hearing panel" and inserting the following **new** definition in lieu thereof:

"Hearing panel," as used in this chapter, shall refer to the director of education, or the director's designee, sitting as the administrative law judge and two members of the department of education staff designated by the administrative law judge to hear the presentation of evidence or oral arguments concerning appeals which are unusual or which present issues of first impression.

ITEM 2. Amend subrule 6.3(1) as follows:

6.3(1) An appeal shall be made in the form of an affidavit, unless an affidavit is not required by the statute establishing the right of appeal, which shall set forth the facts, any error complained of, or the reasons for the appeal in a plain and concise manner, and which shall be signed by the appellant and delivered to the office of the director by United States Postal Service, *facsimile (fax)*, or personal service. The affidavit shall be considered as filed with the agency on the date of the United States Postal Service postmark, *the date of arrival of the facsimile*, or the date personal service is made. ~~Delivery of the affidavit or other request for appeal shall not be made by facsimile (fax).~~ Time shall be computed as provided in Iowa Code subsection 4.1(34).

ITEM 3. Amend rule 281—6.13(17A) as follows:

281—6.13(17A) Application for rehearing of final decision. Any party may file an application for rehearing with the administrative law judge stating the specific grounds therefor, and the relief sought, within 20 days after the issuance of any final decision by the board. A copy of the application shall be timely mailed by the department to all parties of record not joining therein. Such application for rehearing shall be deemed to have been denied unless the board *or the administrative law judge* grants the application within 20 days ~~after its of the filing. A rehearing shall not be granted unless it is necessary to correct a mistake of law or fact, or for other good cause.~~

ITEM 4. Amend subrule 6.14(1) as follows:

6.14(1) In the event ~~the board directs~~ a rehearing is *granted*, ~~the hearing panel~~ *administrative law judge*, in arriving at a subsequent decision, may either review the record and arguments or may proceed with either a full or partial hearing under the appeal hearing provisions of this chapter.

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8549A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 8, "ICN Subsidization Reimbursement Procedures," Iowa Administrative Code.

This chapter is being rescinded since the \$2.5 million disbursement to the ICN never occurred, making these rules obsolete.

No public hearing was held. Notice of Intended Action was published on September 9, 1998, in the Iowa Administrative Bulletin as **ARC 8279A**.

This amendment is intended to implement Iowa Code section 256.11.

This amendment will become effective January 20, 1999. The following amendment is adopted.

Rescind and reserve **281—Chapter 8**.

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8548A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby adopts amendments to Chapter 26, "Driver Education," Iowa Administrative Code.

The amendments establish new qualifications for a driver education instructor and eliminate the waiver provision of 180 minutes of behind-the-wheel street driving.

Notice of Intended Action was published on October 7, 1998, in the Iowa Administrative Bulletin as **ARC 8376A**. No public hearing was held. The amendments are identical to the Notice of Intended Action except for the addition of Item 3 to update the implementation sentence at the end of Chapter 26.

These amendments are intended to implement Iowa Code section 321.78 as amended by 1998 Iowa Acts, chapter 1112.

These amendments will become effective January 20, 1999.

The following amendments are adopted.

ITEM 1. Rescind rule 281—26.1(256) and adopt the following new rule in lieu thereof:

281—26.1(256) Licensure and approval. To be qualified as a classroom or laboratory driver education instructor, a person shall have satisfied the educational requirements for a teaching license at the elementary or secondary level and hold a valid license to teach driver education in the public schools of this state. Street or highway driving instruction may be provided by a person qualified as a classroom driver education instructor or a person certified by the department of transportation.

ITEM 2. Rescind subrule 26.2(3).

ITEM 3. Amend **281—Chapter 26**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 282.6, ~~as amended by 1992 Iowa Acts, House File 2384, section 2, and 321.178 as amended by 1992 Iowa Acts, House File 2452, section 44, 1998 Iowa Acts, chapter 1112, and 321.189.~~

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8551A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the Department of Education hereby adopts Chapter 48, "Certified School to Career Program Approval," Iowa Administrative Code.

The Certified School to Career Program Approval is designed to provide an articulated sequential program of study, including secondary and postsecondary components, resulting in a diploma, associate's degree, or other credential and utilizing paid work-site internships in partnership with an employer to prepare participants for specific employment. Additionally, the program assists participants in preparing for a career field and provides postsecondary education financing and employment opportunities in Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 7, 1998, as **ARC 8374A**. A public hearing was held on October 29, 1998. Comments received are addressed with changes. Paragraph 48.4(1)"c" requiring evidence of appropriate labor market trend information and data was deleted. The need is already established because employers are a required partner in the program. Adding paragraph 48.4(2)"j" gives assurance to reflect consistency of requirement under rules for the Economic Development component of the program. An addition was made to require consultation with appropriate labor organizations in the development of a description of skills and knowledge for vocational technical career(s) requiring two or fewer years of postsecondary education.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, sections 15 to 21.

These rules will become effective January 20, 1999.

The following new chapter is adopted.

CHAPTER 48**CERTIFIED SCHOOL TO CAREER
PROGRAM APPROVAL**

281—48.1(77GA,ch1225) Purpose. The purpose of the certified school to career program is to provide an articulated sequential program of study, including secondary and postsecondary components (with the option of registered apprenticeship) and paid internship, resulting in a diploma, associate's degree, or other credential in partnership with an employer to prepare participants for a career field. Additionally, the program provides the participant with postsecondary education financing and employment opportunities in Iowa.

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281—48.2(77GA, ch1225) Definitions. For the purpose of this chapter, the following definitions apply:

“Apprenticeship program” means a program that is registered by the Bureau of Apprenticeship and Training, U.S. Department of Labor, and evidenced by a certificate of registration as meeting the standards of the Bureau of Apprenticeship and Training and includes a secondary school component. The apprenticeship program is one of the two eligible school to career programs.

“Appropriate labor organization” means an organization with whom an employer has entered into a collective bargaining agreement for the occupation(s) for which the program is being developed; or if an employer has not entered into a collective bargaining agreement with a labor organization for the occupation(s) for which the program is being developed, then a labor organization(s) that represents the occupation(s) in other employment settings would be the appropriate organization.

“Approved program” means a program other than an apprenticeship program that has been reviewed and approved by the state board of education. A public or private secondary school or postsecondary institution, or both, is the entity responsible for submission of the program, coordination of the required parties, program development, and coordination of the training agreement(s).

“Articulation” means the process of mutually agreeing upon skills, knowledge, and performance levels transferable among approved apprenticeship programs, secondary schools and postsecondary institutions for advanced placement or credit in a school to career program.

“Articulation agreement” means the written document that includes the decisions agreed upon by the secondary school(s) and eligible postsecondary institution(s) and the process used by the institution or apprenticeship program to grant advanced placement or credit.

“Career field” means an occupational area.

“Certified school to career program” or “certified program” means a sequenced and articulated secondary and postsecondary program registered as an apprenticeship program under 29 CFR Subtitle A, Part 29, which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18, or a program approved by the state board of education, in conjunction with the department of economic development, as meeting the standards enumerated in 1998 Iowa Acts, chapter 1225, section 17, that integrates a secondary school curriculum with private sector job training which places participants in job internships, and which is designed to continue into postsecondary education and that will result in teaching new skills and adding value to the wage-earning potential of participants and increase their long-term employability in the state and which is conducted pursuant to an agreement as provided in 1998 Iowa Acts, chapter 1225, section 18.

“Department” means the state department of education.

“Individual training plan” means a written statement of the training commitment from institutions involved including an outline of a definite plan of progressive experiences and learning activities and serves as a schedule or step-by-step plan for training to be used by the employer, school, postsecondary institution, and participant.

“Internship” means work-site learning in which a three-way partnership is established among the secondary school or postsecondary institution, employer, and participant for the purpose of providing experiences related to the participant’s career field. A signed agreement among all parties

outlining a participant’s individual training plan is a necessary component of an internship.

“Mentor” means an employee(s) who possesses the skills and knowledge of the occupation to be mastered by a participant and who instructs and critiques the performance of the participant in accordance with industry standards.

“Minimum academic standards” means the set of standards and performance levels agreed to by the employer and participant that must be maintained throughout the program for the participant to be eligible for financial program benefits and the academic requirements established by the secondary school and postsecondary institutions.

“Participant” means an individual between the ages of 16 and 24 who is enrolled in a public or private secondary school or postsecondary institution and who initiated participation in a certified school to career program as part of the individual’s secondary school education.

“Postsecondary institution” means an institution of higher learning under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9, subsection 1.

“Sponsor” means any person, association, committee, or organization operating a school to career program and in whose name the program is or will be registered or approved.

“Teacher” means the individual who holds an appropriate license and endorsement and who is responsible for the oversight of the participant’s preparation and participation, in school and in the work site, and for the development of the individual training plan.

281—48.3(77GA, ch1225) Program requirements. An approved school to career program shall comply with the following requirements:

1. Approval from the state board of education as a certified school to career program.
2. Participation of a public or private secondary school, postsecondary institution, and one or more employers.
3. An agreement developed and agreed to by all entities participating in the program. The agreement shall identify the program sponsor and describe the roles and responsibilities of each of the entities and other administrative issues as required by Iowa Code chapter 28E.
4. Program’s standards and required performance levels of participants approved by the employer(s).
5. Specific career field content and related academic instruction during the junior and senior year of the secondary component.
6. One or more years of postsecondary education in the career field.
7. Equivalent of three paid summer internships supervised by a teacher for each participant beginning after completion of the junior year in high school.
8. Not less than a two-year work commitment provided for the participant following the participant’s completion of the program.
9. A mentor assigned by the employer in the career field of the participant.
10. Compliance with all state and federal laws pertaining to the workplace.
11. Instruction in health and safety related to the career field and industry the participant is preparing to enter.
12. A program evaluation component for gathering data that can be utilized to improve the program and report the impact of the program to members of the public.

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13. Assessment services that are utilized to determine the supportive services (including remedial instruction) needed for each participant to successfully complete the program.

14. Recruitment strategies that encourage the full participation of all participants who desire to enter the career field that the program is preparing the participant to enter regardless of gender, race, ethnicity or disability.

15. An individual training plan developed for each participant and agreed to by the participant, public or private secondary school, postsecondary institution and sponsoring employer. The plan shall include, but not be limited to, the following: identification of the parties involved; statement of program purposes; career field of the participant; duration of the training period; time schedule of work; classroom instruction, including internships; beginning wage; employer responsibilities; school and teacher responsibilities; participant responsibilities; parent/guardian responsibilities; name, date of birth, age, address, and telephone number of participant; signatures of participant, parent/guardian where applicable, employer, and teacher; accident and liability insurance provisions; rotation across all work processes of the career field; causes for imposition of penalties or other disciplinary action; nondiscrimination statement; schedule of special training sessions provided by employer; tasks to be learned and performed on the job; employer-established performance and academic standards; safety instruction; schedule of specific job-related and academic instruction; and assessment and evaluation process and timeline.

16. An approval process which requires an assurance that the individual plan will be developed and monitored.

281—48.4(77GA, ch1225) Approval process. The private or public secondary school or postsecondary institution shall submit a request for program approval to the state board of education. The department of education staff will review the application to determine its eligibility for approval and forward the recommendation to the state board of education. Upon state board action, the department will notify the program applicant and the department of economic development of the approval of the certified school to career program. Refer to Iowa Code chapter 11 and sections 15.104 and 15.106 for other procedures.

48.4(1) The department of education and state board of education shall utilize the following criteria in the review and approval of the certified school to career program plans. The plan shall include evidence of the following:

a. A sequential two-year secondary program which is articulated into a postsecondary program of one or more years in the career field and includes a listing of any other institutions with which the program is articulated.

b. Participation of a public or private secondary school, postsecondary institution, and one or more employers. Other sponsor(s) and their role(s) are identified.

c. A description of skills and knowledge needed for entry into the career field. If a school to career program is designed for a vocational technical career(s) requiring two or fewer years of postsecondary education, the description shall be developed in consultation with an appropriate labor organization(s).

d. A description of the courses and their length designed to deliver the proposed program with evidence that instruction includes competency-based specific career field content in the secondary and postsecondary components and that related academic instruction is also identified in the two-year secondary component.

e. A description of program evaluation component for gathering data that can be utilized to improve the program

and report the impact of the program to members of the public.

f. Evidence of instruction in health and safety related to the career field and industry the participant is preparing to enter.

g. A description of the recruitment strategies that will encourage the full participation of all participants who desire to enter the program.

h. A description of the supportive services that will be provided to program participants to enable their successful participation in the program.

48.4(2) The following assurances shall be provided:

a. Participating employer(s) agrees to provide the equivalent of three paid summer internships and two years of work experience following program completion.

b. Individual training plans will be developed and monitored for each participant.

c. Employer(s) will select a mentor for each student in the program career field, and the mentor will receive appropriate training.

d. Assessment services are utilized to determine the supportive services needed for each participant to successfully complete the program.

e. Program complies with all state and federal laws pertaining to the workplace.

f. Instructors teaching in this program will be appropriately licensed.

g. Program is jointly administered and appropriate contracts are in place.

h. Program complies with all federal and state laws which prohibit discrimination on the basis of race, color, national origin, gender, disability, religion, creed, age, or marital status in educational programs.

i. Services to students with disabilities are provided in the least restrictive environment that will meet their needs.

j. Work-site agreements will be developed for each participant.

These rules are intended to implement 1998 Iowa Acts, chapter 1225, sections 15 to 26.

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8545A

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 256.7(5), the State Board of Education hereby adopts Chapter 69, "Waiver of School Breakfast Program Requirement," Iowa Administrative Code.

This new chapter allows for the application for waiver of the requirement that all school districts shall operate or provide for the operation of school breakfast programs at all public schools in each district. Waivers may be granted for a period of one year. The waiver must be approved by the State Board of Education.

A public hearing was held on November 2, 1998, in the State Board Room, Grimes State Office Building. There were no changes in the rules as published in the Iowa Administrative Bulletin on October 7, 1998, as **ARC 8378A**. Three

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school districts spoke at the hearing. Comments were received by phone, mail, and fax from 21 other districts prior to the hearing.

Comments focused on two areas of concern. One concern was with the requirement that breakfast programs be operated in all public schools in each district. Those commenting wanted the Iowa law to include the concept of student access to a school breakfast program as an option to a breakfast program in all schools. An example would be students having the option to participate in a breakfast program in a nearby school. The other concern was that Iowa law provides waivers for one year only. Those commenting stated that if a reason was valid for one year and nothing changes, the reason should be valid for subsequent years with yearly reevaluation.

One comment was received expressing the opinion that no waivers should be granted. From previous experience the commenter felt that if breakfast programs were available, students would take advantage of the program and this would contribute to improved student achievement in class.

This chapter will become effective January 20, 1999.

These rules are intended to implement Iowa Code section 283A.2.

The following new chapter is adopted.

CHAPTER 69
WAIVER OF SCHOOL BREAKFAST
PROGRAM REQUIREMENT

281—69.1(283A) General statement. Applications for waiver of the requirement that all school districts shall operate or provide for the operation of school breakfast programs at all public schools in each district effective July 1, 1999, until July 1, 2000, are subject to approval by the state board of education as provided in Iowa Code section 283A.2(3).

281—69.2(283A) Definitions. For purposes of clarity, the following definitions are used throughout this chapter:

“Department” means the state department of education.

“Nutritionally adequate meal” means a lunch or breakfast which meets the minimum criteria for eligibility for federal reimbursement under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

“School” means a public school of high school grade or under.

“School board” means a board of school directors regularly elected by the registered voters of a school corporation or district of the state of Iowa.

“School breakfast or lunch program” means a program under which breakfasts or lunches are served by any public school in the state of Iowa on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

281—69.3(283A) Institutions impacted. Iowa Code section 283A.2 states that all public school districts shall operate or provide for the operation of school breakfast programs at all public schools in each district beginning with the July 1, 1999, school year unless the state board of education has granted a waiver. Under Iowa Code section 283A.2(3), waivers are only available for the 1999-2000 school year.

281—69.4(283A) Criteria for applying for a waiver. Each school or school district unable to meet the requirement to provide a school breakfast program may file, not later than June 1, 1999, for the school year beginning July 1, 1999, on forms provided by the department, a written request to the

state board of education for a waiver of the breakfast program requirement for the school or school district.

The written request for waiver shall be made by the school district for the entire district or for one or more schools within the district. The waiver request shall include the following components:

1. The name(s) of the school or school district applying for the waiver, agreement number, contact person, and telephone number.

2. The reason(s) for which the waiver is being requested and corresponding documentation.

3. The percentage of students in attendance at the school during the month of March 1999 who were eligible for free or reduced price meals.

4. Signatures of the president of the local school board, the school food authority, and the superintendent.

281—69.5(283A) Approval of waiver applications. The department shall receive all requests for waiver of the breakfast program requirement. The department will evaluate the requests and make recommendation for approval or denial based on the criteria established by the state board of education. The state board of education will approve or deny all waiver requests. The criteria for evaluating the waiver request shall include the following:

1. Required components including sufficient detail to justify the reason for the waiver request.

2. Documentation that less than 35 percent of the students in attendance at the school during the month of March 1999 were eligible for free or reduced price meals under the federal National School Lunch Act of 1946 and the federal Child Nutrition Act of 1966.

3. A valid reason for requesting a waiver:

◦ A breakfast program was implemented in this facility during the 1997-98 or 1998-99 school year and participation was less than 15 percent of enrollment, or

◦ A survey was conducted of all households in the school's attendance area within the past year and less than 25 percent expressed interest in participating in a breakfast program, or

◦ The district school food service program is operating with a negative balance, or

◦ A breakfast program is offered to all students in the district although a breakfast program is not available in all school buildings, or

◦ Any other circumstance as determined by the state board that warrants the granting of the waiver request.

281—69.6(283A) Notification. The department will notify school districts if the request for waiver of the school breakfast program requirement for the school year beginning July 1, 1999, has been approved or denied. The notification will be mailed within ten working days of the decision by the state board of education.

281—69.7(283A) Schools granted a waiver from the school breakfast program requirement. School districts granted a waiver for the school year beginning July 1, 1999, shall be required to file a plan for implementing the required breakfast program for the following school year. The written plan shall be on file with the department no later than May 31, 2000.

281—69.8(283A) Appeal of waiver denial. A decision by the state board of education to deny a waiver is final. Any applicant may appeal the denial of a properly submitted waiver application to district court under the provisions of Iowa Code chapter 17A.

EDUCATION DEPARTMENT[281](cont'd)

These rules are intended to implement Iowa Code section 283A.2.

[Filed 11/19/98, effective 1/20/99]
[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8547A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts Chapter 84, "Financial Incentives for National Board Certification," Iowa Administrative Code.

This new chapter creates two financial incentive programs for Iowa teachers receiving National Board Certification (NBC) and provides guidelines to administer both programs.

These rules were previously Adopted and Filed Emergency and published in the October 7, 1998, Iowa Administrative Bulletin as **ARC 8372A**. Notice of Intended Action to solicit comments on that submission was published on October 7, 1998, in the Iowa Administrative Bulletin as **ARC 8371A**. A public hearing was held November 5, 1998. There have been no changes in the rules as published under Notice of Intended Action.

These rules will become effective on January 20, 1999, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 1998 Iowa Acts, chapter 1216, section 5.

The following **new** chapter is adopted.

CHAPTER 84**FINANCIAL INCENTIVES FOR
NATIONAL BOARD CERTIFICATION**

281—84.1(77GA,ch1216) Purpose. National Board Certification (NBC) is available to teachers nationwide and requires candidates to demonstrate their teaching practice as measured against high and rigorous standards. NBC teachers enhance the educational experience of their students and motivate fellow teachers toward excellence in classroom teaching. These rules implement the two financial incentive programs enacted by the 1998 Iowa legislature to increase the number of NBC teachers in Iowa.

281—84.2(77GA,ch1216) Definitions. For the purpose of these rules, the following definitions shall apply:

"Department" means the state department of education.

"Director" means the director of the state department of education.

"Employed by a school district in Iowa" means a teacher employed in a nonadministrative position in an Iowa school district pursuant to a contract issued by a board of directors of a school district under Iowa Code section 279.13 and any full-time permanent substitute teacher employed under individual contracts not included under Iowa Code section 279.13 but who is receiving retirement and health benefits as part of the substitute teacher's contract.

"National Board Certification (NBC)" is a nationwide certification program administered by the National Board for Professional Teaching Standards. The certification program requires candidates to participate in a rigorous two-part assessment consisting of portfolio entries and assessment center exercises.

"National Board for Professional Teaching Standards (NBPTS)" is a private nonprofit organization whose goal is to develop professional standards for early childhood, elementary and secondary school teaching. NBPTS administers the NBC program.

"School district" means a public school district.

"Teacher" means an Iowa-licensed teacher as defined in Iowa Code section 272.1.

281—84.3(77GA,ch1216) Registration fee reimbursement program. If sufficient funds are appropriated by the Iowa legislature, the department shall administer a registration fee reimbursement program.

84.3(1) Eligibility. Teachers seeking reimbursement shall apply to the department within one year of registration with NBPTS. Teachers eligible for the registration fee reimbursement program shall meet all of the following qualifications:

a. The individual has all qualifications required by NBPTS for application for certification.

b. The individual is a teacher.

c. The individual is employed by a school district in Iowa.

d. The individual completes the department's application process, which includes submitting verification of NBC registration.

e. The individual has not received reimbursement from this program at any previous time.

84.3(2) Selection of teachers for registration fee reimbursement. If funds are available, all teachers who apply to the department shall receive registration fee reimbursement. If, however, in any fiscal year the number of eligible teachers that apply for the reimbursement exceeds the funds available, the department shall conduct a lottery selection process in proportion to the number of teachers in each area education agency.

84.3(3) Reimbursement. Teachers determined eligible shall receive reimbursement in the following manner:

a. Initial registration fee reimbursement. Each eligible teacher shall receive an initial reimbursement of one-half of the reimbursement fee charged by NBPTS upon submission to the department of the NBC registration confirmation form provided to each teacher by NBPTS.

b. Final registration fee reimbursement. The final registration fee reimbursement shall be awarded when the eligible teacher notifies the department of the teacher's certification achievement and submits verification of certification. If an eligible teacher fails to receive certification, the teacher can receive the remaining reimbursement if the teacher achieves certification within three years of the initial NBC score notification.

84.3(4) Withdrawal from NBC process. A teacher who has received the initial registration fee reimbursement form from the department and withdraws from the NBC process shall reimburse the department the amount received from the department within 30 days of receiving any fee reimbursement form from NBPTS if the reimbursement from NBPTS is equal to or greater than the amount received from the department. If the reimbursement amount from NBPTS is less than the amount the teacher received from the department,

EDUCATION DEPARTMENT[281](cont'd)

the teacher shall reimburse the department any amount received from NBPTS.

281—84.4(77GA,ch1216) NBC annual award. If sufficient funds are appropriated by the legislature, each eligible NBC teacher can qualify for an NBC annual award consisting of a \$10,000 award per year for a maximum, nonrenewable period of five years of certification.

84.4(1) Eligibility. Individuals eligible for the NBC annual award shall meet all of the following qualifications:

- The individual is an NBC teacher.
- The individual is a teacher.
- The individual is employed by a school district in Iowa.
- The individual completes the department's application process, which includes submitting verification of certification.
- The individual has not received an NBC award for more than five years.
- The individual is applying for the award within one year of being eligible for the award.

84.4(2) Application. An NBC teacher shall submit an application verifying eligibility for an NBC award to the department by January 1 of each fiscal year the NBC teacher is eligible for the award. NBC awards shall be issued to eligible NBC teachers on or about January 15 of each fiscal year.

84.4(3) Taxes. The NBC award is not considered salary for purposes of Iowa Code chapter 97B. The eligible NBC teacher will be responsible to pay the appropriate state and federal taxes. The department will notify state and federal taxing authorities of the award and the NBC teacher will be issued an IRS Form 1099.

281—84.5(77GA,ch1216) Appeal of denial of a registration fee reimbursement award or an NBC annual award. Any applicant may appeal the denial of a registration fee reimbursement award or an NBC annual award to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of denial and must be based on a contention that the process was conducted outside statutory authority or violated state or federal law, regulation or rule. The hearing and appeal procedures found in 281—Chapter 6 that govern director's decisions shall be applicable to any appeal of denial.

In the notice of appeal, the applicant shall give a short and plain statement of the reasons for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 30 days from the date of the hearing.

These rules are intended to implement 1998 Iowa Acts, chapter 1216, section 5.

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8546A**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 90, "Standards for Graduate Teacher Education Programs," Iowa Administrative Code.

This chapter was replaced by Chapter 78 in 1993.

Notice of Intended Action was published on September 9, 1998, in the Iowa Administrative Bulletin as **ARC 8283A**. No public hearing was held. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code section 256.7(3).

This amendment will become effective January 20, 1999. The following amendment is adopted.

Rescind and reserve **281—Chapter 90**.

[Filed 11/19/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8561A**ENGINEERING AND LAND
SURVEYING EXAMINING
BOARD[193C]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board hereby amends Chapter 1, "Administration," Iowa Administrative Code.

This amendment is necessary because the Board's requirement to print an annual report for licensees was eliminated effective July 1, 1998.

This amendment is identical to that published in the Iowa Administrative Bulletin as **ARC 8304A** on September 9, 1998.

This amendment is intended to implement Iowa Code section 542B.10.

This amendment will become effective January 20, 1999. The following amendment is adopted.

Rescind and reserve subrule **1.9(6)**.

[Filed 11/25/98, effective 1/20/99]

[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8559A**LIBRARIES AND INFORMATION
SERVICES DIVISION[286]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 256.52, the Commission of Libraries hereby amends Chapter 1, "Organization and Operation"; Chapter 2, "Public Records and Fair Information Practices"; and Chapter 3, "State-wide Programs and Agreements"; rescinds Chapter 6, "Library Services and Construction Act (LSCA) Grant Program"; adopts a new Chapter 6, "Library Services and Technology Act (LSTA) Program"; and adopts a new Chapter 7, "Internet Use Policy," Iowa Administrative Code.

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These amendments reflect changes in the Code of Iowa and establish procedures for information delivery, resource sharing, a new federally funded program for libraries, and the state library's Internet use policy.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 23, 1998, as **ARC 8337A**. After receiving oral comments from interested parties, the Commission decided to rescind rule 286—1.2(256) and not to adopt rule 286—7.4(256), numbered paragraph "2." The respective changes were made in order for the Commission to continue to examine the mission statement as part of its ongoing strategic planning process and to minimize restrictions on customer use of the State Library's electronic information resources.

These amendments were adopted by the Commission of Libraries on October 27, 1998.

These amendments are intended to implement Iowa Code sections 256.50 to 256.56.

These amendments shall become effective January 20, 1999.

The following amendments are adopted.

ITEM 1. Amend rule **286—1.1(256)** by striking the definition of "LSCA" and inserting the following new definition:

"LSTA" means the Library Services and Technology Act Grant Program as defined by P.L. 104-208 (1997).

ITEM 2. Rescind and reserve rule **286—1.2(256)**.

ITEM 3. Amend subrule 1.3(2) as follows:

1.3(2) Sections Units. The state library consists of ~~eight sections~~ seven units: library development (includes the ~~Library Services and Construction Act Grant Program~~ LSTA Grant Program, public library accreditation, library staff certification, Open Access, Access Plus, continuing education and consulting); ~~networking (includes the Iowa Locator, the Iowa Fax Network, and Iowa Resources and Information Sharing (IRIS))~~; information services (includes public policy, the state medical, federal documents, state documents, and patents depository collections); the state law library; technical services (includes the state documents depository program); the state data center; audiovisual services; and administration.

ITEM 4. Amend subrule 1.3(3) as follows:

1.3(3) Commission on of libraries. The commission ~~on of~~ libraries consists of ~~seven~~ eight members as defined in Iowa Code section 256.52. The commission shall meet at a time and place specified by the chair. Notice of a meeting and the agenda will be posted at the state library at least ~~ten days~~ 24 hours prior to the meeting and shall be mailed to any interested individual or organization upon request. The operation of commission meetings shall be governed by the following procedures:

- A quorum shall consist of ~~four~~ five members.
- Any action taken by the commission requires an affirmative vote by at least ~~four~~ five members.
- and d. No change.

ITEM 5. Amend subrule 1.4(1) as follows:

1.4(1) Photocopies of library materials for Iowa residents. The state library will provide library service to any resident of Iowa. To ensure the availability of high-demand library materials for in-house use, the state library may choose not to lend specific library items. In lieu of lending the original item, the library may choose to provide a photocopy of the requested material at a nominal charge of 20 cents per page. *Materials may be faxed at a cost of \$2 for the*

first page and \$1 for each additional page including the cover sheet. ~~Fax and priority~~ Priority delivery services may also be requested by the borrower at additional expense.

ITEM 6. Amend subrule 1.4(2) as follows:

1.4(2) Photocopies of library materials for nonresidents of Iowa. To encourage interstate resource sharing, the state library may enter into reciprocal free interlibrary loan photocopy agreements with out-of-state libraries. For other out-of-state businesses and residents, the state library will charge the following fees:

First 10 pages	\$5.00 7 minimum
11-20	6.50 9
21-30	8.00 10
31-50	10.00 12
Over 50	10.00 plus 15¢ per page 12 plus 20¢ per page

Materials may be faxed (no more than 20 pages) at a cost of \$2 for the first page and \$1 for each additional page including the cover sheet.

~~Fax and priority~~ Priority delivery services may also be requested by the borrower at additional cost to the borrower.

This rule shall not preclude the state library from participating in interstate library compacts to support reciprocal resource sharing.

ITEM 7. Amend rule **286—2.1(17A,22)** by adding the following new definition:

"Custodian of the record" means the state librarian.

ITEM 8. Amend subrule 2.15(1) as follows:

2.15(1) Council, board, and commission records. Agendas, minutes, and materials presented to the ~~state library~~ mission of libraries are available from the state library, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council and commission records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not stored on an automated data processing system.

ITEM 9. Amend **286—Chapter 3, Background**, as follows:

BACKGROUND

The state library is charged with developing long-range plans for the continued improvement of library services in the state. The most recent long-range ~~plan was plans were~~ entitled "Iowa Libraries: A Time to Grow, 1985-90." "Unified Plan for Library Service in Iowa" and the "LSTA Five-Year Plan." The major ~~accomplishments from that~~ outcomes of these planning effort efforts include the ~~development of the interlibrary loan system and the statewide computerized card catalog~~, maintenance of SILO, the ~~establishment of a voluntary certification program for public librarians, and the establishment~~ continued development of standards for public libraries which includes a voluntary accreditation program.

Based on existing programs and services, the current planning effort addresses the state library's role in promoting and developing library services in the state, coordinating interlibrary cooperation, and providing Iowans with access to the publications of state government. The state library's other roles, such as meeting the information needs of the three

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branches of state government and providing census, patent, legal and medical information, are not addressed in this document.

SEE: ~~Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992. Unified Plan for Library Service in Iowa, 1994, and the LSTA Five-Year Plan. State Library of Iowa, 1998.~~

ITEM 10. Rescind rule 286—3.1(256) and adopt the following new rule in lieu thereof:

286—3.1(256) State of Iowa Libraries Online (SILO). Purpose is to provide electronic access to Iowa's library resources and to electronic information resources. Includes an electronic "card catalog" and associated electronic interlibrary loan system to facilitate the identifying and requesting of library materials among Iowa libraries. Delivers statewide library access to numerous citation and full text databases.

ITEM 11. Rescind and reserve rule 286—3.2(256).

ITEM 12. Rescind and reserve rule 286—3.5(256).

ITEM 13. Amend rule 286—3.6(256) as follows:

286—3.6(256) In Service to Iowa: Public Library Measures of Quality. Purpose is to provide performance measures to encourage the ongoing development of quality *public* library service in the state. By identifying policies, service levels, role selection and output measures, consistency and quality in all aspects of *public* library service can be achieved.

SEE: *In Service to Iowa: Public Library Measures of Quality*. 2d 3d ed. State Library of Iowa, 1989 1997.

ITEM 14. Amend subrule 3.8(2) as follows:

3.8(2) Procedures.

a. ~~The manual and promotional materials are developed around a theme. An advisory committee provides advice to the state library regarding this program.~~

b. ~~Participating libraries receive a base package of materials (manual, posters, bookmarks, and related materials). Additional quantities are available for purchase. Orders for materials are cumulated prior to printing. Working with a multistate cooperative, the manual and promotional materials are developed around a theme.~~

c. ~~Program materials are publicized and promoted through announcements in "Footnotes," the state library newsletter. Participating libraries may purchase theme materials (manuals, posters, bookmarks, and related materials).~~

d. ~~The program is publicized and promoted through the state library's newsletter and through regional workshops each year.~~

ITEM 15. Amend rule 286—3.9(256) as follows:

Amend subrule 3.9(4), paragraph "d," as follows:

d. Depository libraries may be selected on the basis of one or more of the following criteria:

(1) Geographic location consistent with a policy of distributing depositories so as to minimize the *travel* distance of a user ~~would need to travel~~.

(2) Demonstrated ability to handle the receipts desired based on size of collection, identified need of the library's clientele, and the availability of space, staff and equipment.

(3) *Demonstrated need/value to state of placing depository collection in facility.*

~~(3)~~(4) Present federal depository status.

(4) Upon approval of the application, a contract with the depository library shall be completed.

Further amend rule 286—3.9(256) by striking the reference at the end thereof as follows:

SEE: ~~Blueprints for the Future: A Long Range Plan for the State Library of Iowa 1992-1996. State Library of Iowa, 1992.~~

ITEM 16. Rescind 286—Chapter 6 and adopt the following new chapter:

CHAPTER 6
LIBRARY SERVICES AND TECHNOLOGY
ACT (LSTA) PROGRAM

286—6.1(256) Description. The Library Services and Technology Act (LSTA) program is an annual, federally funded program which provides assistance to libraries and library programs in Iowa. The purpose of the Library Services and Technology Act is to stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages. The federal LSTA program, authorized by P.L. 104-208 (H.R. 3610) and enacted September 30, 1997, supersedes the Library Services and Construction Act (LSCA).

6.1(1) The state library administers and uses the state-based LSTA funds (in any proportion) directly or through subgrants or cooperative agreements for the purposes of

a. Establishing or enhancing electronic linkage among or between libraries;

b. Electronically linking libraries with educational, social, or information services;

c. Assisting libraries in accessing information through electronic networks;

d. Encouraging libraries in different areas, and encouraging different types of libraries to establish consortia and share resources; and

e. Paying costs for libraries to acquire or share computer systems and telecommunications technologies.

6.1(2) The state library targets library and information services to persons having difficulty using a library and to underserved urban and rural communities, including children (from birth through age 17) from families with incomes below the poverty line.

286—6.2(256) Advisory councils.

6.2(1) State LSTA advisory council. The LSTA advisory council meets at least annually. The state library when desiring assistance in the program may also call meetings of the LSTA advisory council. The council members are appointed by the state librarian and are broadly representative of the library entities in the state, including public, school, academic, special, and institutional libraries.

The council aids the state library in identifying the needs of the Iowa library community and provides suggestions for meeting those needs in accordance with the basic guidelines of the Five-Year Plan for the Use of Library Services and Technology Act (LSTA) Funds. The council also assists the state library in evaluating LSTA programs and activities and assists the state library in the five-year-plan evaluation.

6.2(2) State SILO advisory committee. The SILO advisory committee shall consist of representatives of the Iowa library community.

The SILO advisory committee reviews the technology needs of Iowa libraries and provides suggestions for meeting those needs in accordance with the basic guidelines of the Five-Year Plan for the Use of Library Services and Technology Act (LSTA) Funds.

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286—6.3(256) Process. The state library administers and uses the state-based LSTA funds (in any proportion) directly or through subgrants or cooperative agreements. The actual amount, timing, and availability of funds for projects is determined by the state library of Iowa in consultation with the LSTA advisory council and the Iowa library community. In accordance with the principles set forth in the basic guidelines of the Five-Year Plan for the Use of Library Services and Technology Act (LSTA) Funds, individual grants are not anticipated. However, when individual grants are deemed to be the appropriate vehicle to meet the identified needs as well as the intent of the guidelines, information on grants will be published and distributed statewide.

6.3(1) Eligibility. Eligibility of projects will be determined by the Five-Year Plan for the Use of Library Services and Technology Act Funds. The use of the funds will have a major impact on library service to Iowans; increase access to information; have a statewide benefit; foster cooperation, resource sharing, and partnerships; involve all types and sizes of libraries; encourage innovation; and emphasize evaluation.

6.3(2) Reporting procedures. All LSTA grant recipients shall submit to the state library documentation of LSTA project-related expenses and periodic and final project reports. LSTA funded projects are subject to on-site monitoring by state library personnel.

6.3(3) Informal appeals. Informal appeals shall be made on procedural grounds only. Such grounds include alleged conflicts of interest, unfair or impartial treatment of applications or procedures not uniformly applied to all applicants.

6.3(4) Informal appeal hearing. A written request for an informal appeal hearing shall be sent to the state librarian. The hearing shall be held within 15 calendar days of the date of the request during regular business hours of the state library. The hearing shall be held before the state librarian or such members of a review board as the state librarian designates. The state librarian shall:

- a. Notify the appellant as to the day, hour, and location of the hearing;
- b. Inform the appellant of the right to submit any written documents regarding the application;
- c. Inform the appellant that a spokesperson must be appointed if the appeal involves more than one person per project. The state librarian or designees shall direct questions only to the spokesperson during the hearing. Any other discussion or comments shall be reserved for a closed executive session. No indication of decision shall be given at the time of the hearing;
- d. Notify the appellant in writing of the decision of the state librarian or designee within five calendar days of the hearing.

6.3(5) Formal appeal. A formal appeal of the LSTA decision may be made to the Iowa commission of libraries.

- a. The appellant's argument shall contain:
 - (1) The facts of the appeal;
 - (2) An argument in favor of the appeal;
 - (3) The remedy sought.
- b. Appeals will be allowed on the procedural grounds that:
 - (1) Staff of the state library or the advisory council acted outside the statutory authority;
 - (2) Projects do not fall within the guidelines of the five-year plan;
 - (3) Staff of the state library or advisory council were influenced to act as a result of a conflict of interest;
 - (4) Staff of the state library or the advisory council acted in a biased or unfair manner.

c. The commission will consider and rule on the appeal after receiving all documentation from the appellant and will notify the appellant in writing of the decision within 30 days. The decision of the commission is final except as provided for in Iowa Code sections 17A.19 and 17A.20.

These rules are intended to implement Iowa Code section 256.51(2)“b.”

ITEM 17. Adopt the following new Chapter 7.

CHAPTER 7
INTERNET USE POLICY
PURPOSE

Access to the Internet is provided to enhance the state library's collections of information resources. It is intended for the educational and informational use of the library's customers. Sales activity, distribution of advertising and those unapproved uses defined under the Code of Iowa are prohibited. (See Iowa Code chapter 728)

286—7.1(256) Rights and responsibilities.

7.1(1) The state library expects the use of all its electronic sources such as the Internet to be responsible, ethical, and legal, and consistent with the purpose for which those resources are provided. To this end:

- a. The state library affirms the right of every individual to have access to constitutionally protected material as stated in the library's collection development policy.
- b. Parents or guardians, not the library or its staff, are responsible for the Internet use by their children.
- c. Internet access is provided in a public area shared by users of all ages, backgrounds, and sensibilities. Users should consider this when accessing potentially controversial information and images.
- d. The state library reserves the right to ask users to discontinue the display of information and images which cause a disruption.

- e. Users should respect the privacy of other Internet users by not observing what sites others are accessing.
- f. Users will not misrepresent themselves as any other user; will not attempt to modify or gain access to files, passwords, or data belonging to others; will not seek unauthorized access to any computer system, or damage or alter software components of any network or database.

- g. Illegal activities subject to prosecution include:
 - (1) Destruction of or damage to equipment, software, or data belonging to the library;
 - (2) Violation of computer system security or system configuration;
 - (3) Violation of the copyright laws of the United States;
 - (4) Downloading or provision of child pornography or display of pornography where it may be seen by children.

7.1(2) Violation of this computer use policy shall result in the loss of computer privileges and may lead to financial responsibility. Illegal activities will be prosecuted.

286—7.2(256) Access to Internet computers.

1. The Internet is available for any user who visits the state library. Access is on a first-come, first-served basis. Appointments are not accepted, but users are welcome to call ahead to check availability.
2. Internet computers are available for use during the library's normal business hours. Use must be completed 15 minutes prior to the library's closing. The Internet may be unavailable due to unforeseen problems with hardware, software, or telecommunications.
3. Users may be asked to log their beginning time at the main desk before using the computer for Internet access. Ini-

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tial use will be limited to one hour. If no other users are waiting, use time may be extended at the discretion of the librarian on duty.

4. While respecting individual users' right to privacy, state library staff reserves the right to monitor use of Internet workstations to ensure compliance with this policy. Staff may ask users to remove themselves from library equipment if observed behavior is in conflict with this policy.

5. Staff use of computers for research and maintenance may, at times, supersede users' access.

286—7.3(256) Costs. Floppy disks are available for \$1 per disk. Users must purchase a clean disk from the main desk for downloading. Users cannot use their own disks. Printing is available for 20 cents per page and must comply with U.S. copyright laws.

286—7.4(256) Internet services available. Users may access the Internet via the World Wide Web, telnet, and gopher.

286—7.5(256) Downloading and saving files. Downloading will be allowed only for selected files, such as census data or government documents not available in print format. Such files may be saved only to floppy disk on the A: drive, never to the hard disk. Users must purchase a clean disk from the main desk for downloading. Users cannot use their own disks. Downloaded files cannot be viewed on the state library computers. Users cannot load or read their own disks on the state library computers.

Downloaded files may contain viruses. The state library is not responsible for damage to a user's computer, or for any loss of data or damage to files on a user's computer as a result of downloaded files.

286—7.6(256) Staff assistance.

1. Users are expected to have a basic knowledge of computer use and the Internet. Staff cannot provide in-depth training for users, but will provide information on training classes in the area. An online tutorial will be available for users not familiar with the Internet.

2. State library staff will answer basic questions about Internet use or help locate resources. Internet reference books are available in the library's collection.

3. Staff reserve the right to waive the procedures contained in this document as circumstances warrant.

These rules are intended to implement Iowa Code sections 256.51 to 256.56.

[Filed 11/25/98, effective 1/20/99]
[Published 12/16/98]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8558A

**PROFESSIONAL LICENSURE
DIVISION[645]**

BOARD OF DIETETIC EXAMINERS

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Dietetic Examiners hereby amends Chapter 80, "Board of Dietetic Examiners," Iowa Administrative Code.

These amendments revise the date for renewal of a license to the licensee's birth month, revise the dates of the continu-

ing education compliance period to be consistent with the dates of license renewal, exempt newly licensed practitioners from submission of continuing education hours for the biennium in which the license is issued, and establish a maximum of 60 hours of continuing education for reinstatement of an inactive or lapsed license.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 21, 1998, as **ARC 8405A**. A public hearing was held on November 10, 1998, from 10 a.m. to 12 noon in the Fourth Floor Conference Room, Lucas State Office Building, Des Moines, Iowa 50319-0075. There were no written or oral comments received in response to the proposed amendments.

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

These amendments were adopted by the Board of Dietetic Examiners by conference call on November 25, 1998.

These amendments will become effective January 20, 1999.

These amendments are intended to implement Iowa Code chapters 152A and 272C and Iowa Code section 147.55.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [80.1, 80.8, 80.9(1), 80.100, 80.107(2), 80.108(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 8405A**, IAB 10/21/98.

[Filed 11/25/98, effective 1/20/99]
[Published 12/16/98]

[For replacement pages for IAC, see IAC Supplement 12/16/98.]

ARC 8556A

**RACING AND GAMING
COMMISSION[491]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 4, "Practice and Procedure Before the Racing and Gaming Commission," and Chapter 10, "Thoroughbred Racing," Iowa Administrative Code.

Items 1 and 2 distinguish between Board hearings and Commission and administrative law judge hearings.

Item 3 more clearly defines who is eligible to claim a horse.

Item 4 more clearly defines the eligibility price of a claimed horse.

These adopted amendments are identical to those published under Notice of Intended Action in the October 7, 1998, Iowa Administrative Bulletin as **ARC 8389A**.

A public hearing was held on October 27, 1998. No comments were received.

These amendments will become effective January 20, 1999.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are adopted.

ITEM 1. Amend rule 491—4.24(99D,99F) as follows:

491—4.24(99D,99F) Presentation of evidence and testimony. In any hearing *before the commission or administra-*

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

tive law judge, each party shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testified on behalf of an adverse party. A person whose testimony has been submitted in written form, if available, shall also be subject to cross-examination by an adverse party. Opportunity shall be afforded each party for redirect examination and recross-examination and to present evidence and testimony as rebuttal to evidence presented by another party, except that unduly repetitious evidence shall be excluded.

ITEM 2. Amend rule 491—4.25(99D,99F) as follows:

491—4.25(99D,99F) Offer of proof. An offer of proof, *before the commission or administrative law judge*, may be made through the witness or by statement of counsel. The party objecting may cross-examine the witness without waiving any objection.

ITEM 3. Rescind subrule **10.5(17)**, paragraph “a,” subparagraph (1), numbered paragraphs “1” and “2,” and adopt in lieu thereof the following new numbered paragraphs:

1. Is a licensed owner at the meeting who either has foal paper(s) registered with the racing secretary’s office or has started a horse at the meeting; or
2. Is a licensed authorized agent, authorized to claim for an owner eligible to claim; or
3. Has a valid open claim certificate. The following may request an open claim certificate from the commission:
 - Any person not licensed as an owner, or a licensed authorized agent for the account of same; or
 - A licensed owner not having foal paper(s) registered with the racing secretary’s office or who has not started a horse at the meeting.

ITEM 4. Rescind subrule **10.5(17)**, paragraph “g,” subparagraph (2), and adopt in lieu thereof the following new subparagraph:

(2) Eligibility price. A claimed horse, declared the official winner of the race from which it was claimed, shall not make its first start back within 30 days in a claiming race (starter allowances and starter handicaps are not considered claiming races) for a claiming price less than that for which it was claimed. After the first start back or 30 days, whichever occurs first, the claimed horse may start in any race for which it is eligible. A horse that is not the official winner in the race in which it is claimed may start in any race. No right, title or interest for any claimed horse can be sold or transferred except in a claiming race for a period of 30 days following the date of claiming. The day claimed does not count, but the following calendar day shall be the first day. The horse shall be required to continue to race at the track where claimed for the balance of the current race meeting.

[Filed 11/23/98, effective 1/20/99]

[Published 12/16/98]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.

ARC 8570A

REVENUE AND FINANCE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.17, 422.53, and 422.68, the Iowa Department of Revenue and

Finance hereby adopts amendments to Chapter 14, “Computation of Tax,” Iowa Administrative Code.

Notice of Intended Action was published in IAB, Volume XXI, Number 9, on October 21, 1998, page 812, as ARC 8409A.

Rule 701—14.2(422,423) is amended to provide an additional tax chart indicating the proper 7 percent tax to be imposed when a jurisdiction imposes the state sales and service tax and both the local option sales and service and local option school infrastructure sales and service local option taxes.

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

These amendments will become effective January 29, 1999, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 422 and 423 and 1998 Iowa Acts, chapter 1130.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.2] is being omitted. These amendments are identical to those published under Notice as ARC 8409A, IAB 10/21/98.

[Filed 11/25/98, effective 1/29/99]

[Published 12/16/98]

[For replacement pages for IAC, see IAC Supplement 12/16/98.]

ARC 8542A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on November 16, 1998, rescinded Chapter 100, “Functional Classification of Highways,” Iowa Administrative Code.

Notice of Intended Action for this rescission was published in the October 7, 1998, Iowa Administrative Bulletin as ARC 8361A.

1998 Iowa Acts, chapter 1075 (Senate File 2257), sections 1 to 17, eliminated state functional classification. Chapter 100, which implemented state functional classification, is therefore being rescinded.

This rescission is identical to that published under Notice of Intended Action.

This rescission is intended to implement 1998 Iowa Acts, chapter 1075, sections 1 to 17.

This rescission will become effective January 20, 1999.

Rule-making action:

Rescind and reserve **761—Chapter 100**, “Functional Classification of Highways,” Iowa Administrative Code.

[Filed 11/17/98, effective 1/20/99]

[Published 12/16/98]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/16/98.



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

EXECUTIVE ORDER NUMBER 68

- WHEREAS,** studies have documented the health risks to individuals from use of tobacco products and exposure to environmental tobacco smoke; and
- WHEREAS,** use of tobacco products is the leading preventable cause of death in the United States, accounting for more than 400,000 deaths each year; and
- WHEREAS,** at least 43 of the chemical compounds that have been identified in tobacco smoke are known to cause cancer in humans or animals; and
- WHEREAS,** workers exposed to secondhand smoke are 34 percent more likely to get lung cancer than those who work in smoke-free environments; and
- WHEREAS,** tobacco smoke represents the single most significant source of pollution in most indoor air environments and secondhand smoke causes 30 times as many lung cancer deaths as all regulated air pollutants combined; and
- WHEREAS,** exposure to secondhand smoke is the third leading preventable cause of death, after active smoking and alcohol use; and
- WHEREAS,** this year 3000 Americans will die of lung cancer due to secondhand smoke; and
- WHEREAS,** direct medical costs attributable to smoking total about \$50 billion a year; and
- WHEREAS,** the State of Iowa has the responsibility to protect and promote the health and welfare of state employees and all citizens; and

- WHEREAS,** buildings owned and operated by the State of Iowa must be accessible to all citizens in order to serve their needs; and
- WHEREAS,** the use of tobacco products in state buildings sets a poor example for citizens of the state, especially young people who are particularly susceptible to peer pressure and influence of the tobacco industry; and
- WHEREAS,** Executive Order Number 26, which I signed on December 31, 1986, prohibited the sale of tobacco products in the areas of buildings under my control in the State Capitol Complex and all offices occupied by state government; and
- WHEREAS,** there are currently policies in place which prohibit the use of tobacco products within individual state buildings, and an executive order would formalize and perpetuate the policies.
- NOW, THEREFORE,** I, Terry E. Branstad, Governor of the State of Iowa, by virtue of the authority vested in me by the Laws and Constitution of the State of Iowa, do hereby order that:

The use of all tobacco products in the areas of buildings under my control in the State Capitol Complex and all offices occupied by state government is hereby prohibited.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 23rd day of November in the year of our Lord one thousand nine hundred and ninety-eight.


GOVERNOR

ATTEST:


SECRETARY OF STATE



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

CERTIFICATE OF ELECTION TO THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

TO THE CLERK OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

This is to certify that on the 3rd day of November, 1998, the following were duly elected as Representatives to the House of Representatives of the United States to represent the State of Iowa, beginning January 3, 1999.

Jim Leach

Jim Nussle

Leonard Boswell

Greg Ganske

Tom Latham

First District

Second District

Third District

Fourth District

Fifth District



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 30th day of November in the year of our Lord one thousand nine hundred ninety-eight.

Terry E. Branstad
GOVERNOR

ATTEST:

Paul D. Pate
SECRETARY OF STATE



State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

CERTIFICATE OF ELECTION FOR SIX-YEAR TERM TO THE SENATE OF THE UNITED STATES

TO THE PRESIDENT OF THE SENATE OF THE UNITED STATES

This is to certify that on the 3rd day of November, 1998, Charles Grassley was duly chosen, by the qualified electors of the State of Iowa, a Senator from said State to represent Iowa in the Senate of the United States for the term of six years, beginning on the 3rd day of January, 1999.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of the State of Iowa to be affixed. Done at Des Moines this 30th day of November in the year of our Lord one thousand nine hundred ninety-eight.

Terry E. Branstad
 GOVERNOR

ATTEST:

Paul D. Pate
 SECRETARY OF STATE

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED NOVEMBER 25, 1998

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. 98-1143. IOWA SUP. CT. BD. OF PROF'L ETHICS & CONDUCT
v. REEDY.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Carter, J. (6 pages \$2.40)

The board of professional ethics and conduct filed a complaint against the respondent, Joseph B. Reedy, stemming from his handling of a probate estate and of fee payments by the estate that were partly for the estate work and partly for unbilled fees for work performed by Reedy for the decedent. The Grievance Commission found Reedy violated disciplinary rules prohibiting neglecting a client matter, engaging in conduct involving deceit or misrepresentation, taking a probate fee before securing court approval, and taking more than half the fee before closing the estate. The commission recommended Reedy be admonished on the fee violations and publicly reprimanded as to the other matters. The case is now before us for our de novo review under Iowa Supreme Court Rule 118.10. **OPINION HOLDS:** We agree with the violations found by the commission and conclude Reedy committed an additional violation by not placing the second fee payment in his trust account. We are convinced the cumulative impact of the offenses warrant suspension of Reedy's license. His license is therefore suspended indefinitely with no possibility of reinstatement for thirty days from the date of this opinion. Costs are assessed to Reedy.

**No. 98-1088. IOWA SUPREME CT. BD. OF PROF'L ETHICS &
CONDUCT v. STEIN.**

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Ternus, J. (9 pages \$3.60)

The board of professional ethics and conduct filed a complaint alleging the respondent, Jeffrey L.L. Stein, had violated disciplinary rules by neglecting legal matters entrusted to him and by attempting to cover up this neglect by misrepresenting his actions to other attorneys and the court. The grievance commission found Stein committed the violations and recommended his license be suspended for at least six months. **OPINION HOLDS:** I. We conclude Stein neglected a client's medical malpractice case and appeal by failing to file timely discovery responses and by failing to meet appellate filing deadlines. He also neglected an estate's appeal by failing to make timely appellate filings. II. We find, as did the Commission, that there were eight mailings and one hand-delivered filing that were never received by the intended recipient or arrived under circumstances inconsistent with a mailing (or delivery) date as claimed by Stein. We find that Stein's representations to opposing counsel and to the court as to

No. 98-1088. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. STEIN. (continued)

the mailing and delivery dates of these documents were false. Although Stein has no prior disciplinary record, his consistent pattern of neglecting clients' matters and, more important, the numerous misrepresentations he made to cover up this neglect warrant a serious sanction. Accordingly, we suspend Stein's license to practice law indefinitely with no possibility of reinstatement for 180 days from the date of this opinion. Costs are assessed against Stein.

No. 98-1326. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. ALLEN.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. (17 pages \$6.80)

This case arises out of attorney Stephen W. Allen's actions while he was a guardian and a conservator for his aunt. The Iowa board of professional ethics and conduct alleged Allen took fees from the conservatorship without prior court approval, made unauthorized gifts to himself, and otherwise took conservatorship funds and converted them to his own use. Because Allen failed to respond to the board's requests for admissions, these matters were conclusively established for purposes of the disciplinary hearing. The Grievance Commission found that the board had established the violations alleged but only recommended a public reprimand. The commission believed a lenient sanction was appropriate due to the familial setting in which the transgressions occurred. **OPINION HOLDS:** We agree that the board has established the disciplinary violations it has alleged. The difficult question we face is the appropriate sanction. Unlike most cases involving conversion of funds, Allen made no attempt to cover up his actions. Nevertheless, the fact remains that Allen took fees without prior court approval, made unauthorized gifts to himself, and on numerous occasions took substantial amounts of money from the conservatorship for his own personal use. In short, he converted his client's funds and in doing so breached his position of trust. The high standards the law imposes on guardians and conservators do not diminish simply because of a close relationship between such fiduciaries and the ward. We must continually impress on the public as well as lawyers that severe disciplinary action will certainly follow a lawyer's conversion of client funds. We therefore order that Stephen W. Allen's license to practice law in this state is suspended indefinitely with no possibility of reinstatement for one year from the date of this opinion. In addition, Allen shall be prohibited from serving as a judicial magistrate during the period of this suspension. Costs are assessed to Allen.

No. 96-2188. KEYSTONE ELECTRICAL MANUFACTURING CO. v. CITY OF DES MOINES; MERCHANTS WHITE LINE WAREHOUSING, INC. v. CITY OF DES MOINES.

Appeal from the Iowa District Court for Polk County, Jack D. Levin and Gene L. Needles, Judges. **REVERSED IN KEYSTONE CASE; AFFIRMED IN MERCHANTS CASE; CASES REMANDED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman and Snell, JJ. Opinion by McGiverin, C.J.

(21 pages \$8.40)

The plaintiffs, Keystone Electrical Manufacturing Co., and Merchants White Line Warehousing, Inc. and two other parties (collectively referred to as Merchants), brought separate actions against the City of Des Moines for property damage sustained arising out of the record floods of 1993. The petitions alleged the City was negligent in failing to close off an embankment next to the Racoon River left open for railroad tracks. Keystone additionally raised a breach of contract claim, arguing the City had a contractual obligation through its agreement with the Corps of Engineers to properly maintain and utilize the local flood control project. The City moved for summary judgment in each case. The district court in the Keystone case granted the City's summary judgment, concluding the City was immune from liability because the City's decision was a response to an emergency, was not negligent in failing to close the opening, and had an affirmative act of God defense. In the Merchants' case, the district court denied summary judgment, concluding there were questions of fact regarding whether the City's decision not to close the opening was discretionary and whether the City was responding to an emergency. It also determined that summary judgment should be denied upon the City's act of God defense. Keystone has appealed. We granted the City's application for interlocutory appeal and consolidated the cases. **OPINION HOLDS:** I. We conclude the substance of the parties' claims implicating breach of contract theories are essentially claims of negligence. We find there are issues of fact as to whether the City breached a duty owed to the plaintiffs. The district court erred in ruling otherwise in the Keystone case. II. We conclude that the City is not immune from liability under the discretionary function exception to liability under Iowa Code section 670.4(3)(1995). We find that the City's decisions, made pursuant to established plans and specifications, did not involve a discretionary function. The district court correctly denied summary judgment in the Merchants case. III. We conclude that there is a material issue of fact concerning whether the City's omission or failure to close the railroad opening was made in response to an emergency situation. We therefore cannot conclude as a matter of law the City was immune from liability under the emergency response exception under section 670.4(11). The district court erred in sustaining the City's motion in the Keystone case on this ground. IV. We lastly conclude the district court in the Keystone case erred in granting summary judgment on the basis that the property damage was solely caused by an act of God since genuine issues remain regarding whether the City's actions in responding to the flood partially caused the plaintiffs' injuries. V. We reverse the district court's summary judgment ruling in the Keystone case, affirm the ruling as to Merchants, and remand for further proceedings.

No. 97-973. IOWA DEP'T OF TRANSPORTATION v. IOWA DISTRICT COURT.

Appeal from the Iowa District Court for Linn County, Jane Spande, District Associate Judge. **WRIT SUSTAINED.** Considered en banc. Opinion by McGiverin, C.J. (10 pages \$4.00)

Four individuals were charged with possession of a controlled substance. In April 1997, the defendants pleaded guilty to the offenses as charged. The district court imposed a fine of \$250 on each defendant but refused to revoke the four defendants' driver's licenses as required by 1996 Iowa Acts chapter 1218, section 68 (hereinafter referred to as section 68), codified on January 8, 1997, at Iowa Code section 901.5(10)(1997). It concluded section 68 is unconstitutional because it violates the single subject requirement of article III, section 29 of the Iowa Constitution. The Iowa Department of Transportation (DOT) filed separate petitions for writ of certiorari challenging the district court's rulings. We granted the DOT's petitions and subsequently consolidated the cases. **OPINION HOLDS:** I. We now reconsider our decision denying defendant's motion for a limited remand or in the alternative to expand the certiorari record to include district court orders including one in a prior separate case in which that court declared section 901.5(10) unconstitutional based on the single subject rule. We allow the additional district court's rulings into the certiorari record. II. In order to take advantage of a successful article III, section 29 challenge brought by another party in unrelated proceedings the previous decision must be one that is made by an appellate court that would be binding on all courts in the state, and not merely a decision of a district court. Accordingly, the prior unappealed district court ruling holding section 68 unconstitutional does not inure to the benefit of those defendants who were sentenced after codification. Any defect in subject matter was cured by codification as far as these defendants are concerned. The district court acted illegally in refusing to revoke the defendant's driver's licenses.

No. 97-283. ZEPEDA v. FORT DES MOINES MEN'S CORRECTIONAL FACILITY.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Harris, J. (4 pages \$1.60)

Zepeda was an inmate at the Fort Des Moines correctional facility, where he was eligible for work release. Fort Des Moines staff were advised by the medical and classification center at Oakdale, from which Zepeda had transferred, that he had hepatitis C, a contagious disease, and that they should inform Zepeda's employer about the condition if he did not disclose it himself. Zepeda obtained a position at Neodata Services through a temporary employment agency, Olsten Staffing Services. Over Zepeda's objection, Fort Des Moines staff told Olsten about the hepatitis, and he was promptly removed from work. Zepeda subsequently produced a doctor's release indicating he did not have hepatitis. Olsten then reassigned him to Neodata, but Zepeda took a job elsewhere, and was released from Fort Des Moines several weeks later. Zepeda filed suit against Fort Des Moines, claiming it had violated Iowa Code section 216.6 (1995) by

**No. 97-283. ZEPEDA v. FORT DES MOINES MEN'S
CORRECTIONAL FACILITY. (continued)**

unlawfully terminating his employment because of a perceived disability. The district court entered judgment in favor of Fort Des Moines, and Zepeda appealed. **OPINION HOLDS:** We find Fort Des Moines was not Zepeda's employer, and its actions therefore did not amount to adverse employment practice or discrimination in employment, as contemplated by section 216.6(1)(a). Olsten's actions were its own, and did not come under Fort Des Moines' control.

No. 97-918. STATE v. VONGPHAKDY.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Per curiam. (2 pages \$.80)

Defendant was one of four men jointly tried and each was convicted of first-degree murder, first-degree robbery, and willful injury. Defendant appeals. **OPINION HOLDS:** I. Based on our decision in a companion case, *State v. Leutfaimany*, ___ N.W.2d ___ (Iowa 1998), we find the defendant's challenges to the district court's failure to sever the trials, and the State's use of redacted pretrial statements made by the defendants are without merit. II. We reject defendant's challenge to the district court's instruction on felony murder. The challenged language is identical to Iowa criminal jury instruction 200.6 and closely parallels defendant's preferred statutory language in Iowa Code section 702.13 (1997). There was clearly no abuse in the trial court's instruction.

No. 97-2078. STATE v. TAYLOR.

Appeal from the Iowa District Court for Pottawattamie County, J.C. Irvin, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Harris, J. (4 pages \$1.60)

On appeal from her convictions of two counts of delivery of methamphetamine (more than five grams), the defendant insists evidence concerning weight measurements of the drug should have been excluded for want of a foundation to establish accuracy and reliability of the scale used. **OPINION HOLDS:** We conclude the officer's testimony regarding this simple scale provided an adequate foundation for his drug-weight testimony, even though evidence of testing for accuracy might have been required for admissibility of the results from a more complicated instrument. The district court therefore did not err in allowing the challenged testimony. We affirm.

No. 96-1851. KROTZ v. SATTLER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, Thomas L. Koehler, Judge. **COURT OF APPEALS DECISION AFFIRMED; DISTRICT COURT JUDGMENT REVERSED.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (6 pages \$2.40)

In April 1985, the plaintiffs contracted to sell the defendants three adjoining parcels of real estate. Due to title problems surrounding the smallest parcel, a railroad right-of-way, the plaintiffs conveyed by warranty deed the two other parcels on December 30, 1986. Closing on the railroad property did not occur, despite the plaintiffs' attempts. Years later, the plaintiffs sought to quiet title to the railroad property. The defendants claimed title under the 1986 warranty deed. The district court found that the parties' offer to purchase contemplated the conveyance of the three parcels, but the closing in December 1986 covered only two of them. There having been no mutual intent to convey the railroad property, and given the years that had passed since the parties executed their agreement, the court quieted title in the plaintiffs. The defendants appealed, and the court of appeals reversed. We granted further review. **OPINION HOLDS:** The parties clearly conveyed only two of the parcels in the 1986 warranty deed. When the plaintiffs agreed in 1985 to sell the railroad property, the *equitable* title passed to the defendants. The plaintiffs only retained *legal* title pending payment of the purchase price. Despite the passage of time, the defendants have a bona fide interest in the railroad property, and the plaintiffs failed to pursue any of the available remedies. They also cannot rely on the running of the statute of limitations to prevent the enforcement of the contract because the limitation period runs from the date of the breach. The trial court erred when it quieted title in the plaintiffs. The court of appeals properly dismissed the action.

No. 97-2073. STATE v. HOSKINS.

Appeal from the Iowa District Court for Scott County, David H. Sivright, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Per curiam. (5 pages \$2.00)

The defendant was convicted of second-degree robbery, an offense for which he must serve 100% of the maximum sentence imposed pursuant to Iowa Code section 902.12 (1997). On appeal he challenges the constitutionality of section 902.12 on the grounds that it constitutes cruel and unusual punishment and violates his rights of equal protection under the federal and state constitutions. **OPINION HOLDS:** I. We conclude section 902.12's requirement that a person convicted of second-degree robbery serve 100% of the maximum sentence does not constitute cruel and unusual punishment. II. We recently rejected the identical equal protection challenge to section 902.12 in *State v. Ceaser*, ___ N.W.2d ___ (Iowa 1998). Accordingly, defendant's trial counsel was not ineffective for failing to raise the issue below. We affirm.

No. 97-1657. STATE v. COOLEY.

Appeal from the Iowa District Court for Black Hawk County, James D. Coil, Joseph Moothart, and J.G. Johnson, District Associate Judges. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Neuman, J. (7 pages \$2.80)

This appeal raises one narrow issue: Did the district court erroneously give a defendant the "choice" between two sentencing options posed by the court? The defendant claims the district court impermissibly relied on one factor by deferring to his choice of sentence. **OPINION HOLDS:** I. We reject the State's error preservation argument. It strikes us as exceedingly unfair to urge that a defendant, on the threshold of being sentenced, must question the court's exercise of discretion or forever waive his right to appeal. II. The record reveals that the court examined many factors and narrowed its sentencing options to two alternatives—to incarcerate the defendant in the county jail for one year, permitting him to "dry out" and keeping him off the streets, or commit him to the department of corrections, thereby creating an opportunity for him to participate in a treatment and work-release program. The court knew that the success of the program would hinge on the defendant's commitment to rehabilitation, and the court simply framed the question as a choice between the two alternatives it was considering. Considering the defendant's lack of interest in rehabilitation, the court then sentenced him to the first option. While we do not condone the "choice" method, it was the court, not the defendant, who made the final choice of sentence. III. We also reject the defendant's claim that he was in no position to make either an informed or wise choice of sentence. He was in the best position to make a wise choice about whether he was interested in rehabilitation or not. Finding no abuse of sentencing discretion, we affirm.

No. 97-458. RALFS v. MOWRY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cedar County, David E. Schoenthaler, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED AS MODIFIED.** Considered by Harris, P.J., and Carter, Lavorato, Neuman, and Snell, JJ. Opinion by Neuman, J. (8 pages \$3.20)

Since the early 1980s, Reynold and Gary Mowry d/b/a Mowry Brothers, have leased farm ground from LoAn King. In 1990, Mowrys agreed to loan her \$125,000, secured by a first mortgage on the farm. Meanwhile, King became embroiled in a controversy with Eddy Matsui. In September 1991, Matsui secured a default judgment against her in federal district court. In the meantime, Mowrys and King renegotiated their lease agreement to extend the 1993-94 lease under the same terms through February 1996, with three one-year extension options, and they executed an extension of their original mortgage. Wayne Ralfs, meanwhile, contracted with Matsui to purchase whatever rights Matsui gained by execution on the judgment. In April 1996, Ralfs received a sheriff's deed to the King farm, and has been the legal titleholder ever since. Ralfs subsequently brought an action alleging the lease extensions were fraudulent conveyances and sought an accounting of the balance due on Mowrys' mortgage. The district court rejected Ralfs' claim, and accepted Mowrys' accounting of the mortgage balance.

No. 97-458. RALFS v. MOWRY.

Ralfs appealed. The court of appeals set aside the transactions between Mowrys and King as fraudulent, and adjusted downwards the amount needed to satisfy Mowrys' mortgage. We granted further review. **OPINION HOLDS:** I. We conclude, as did the district court, that the record before us falls far short of proving fraud by the requisite clear and convincing standard. The challenged lease extensions did no more than continue a business relationship between Mowrys and King that extended back more than a decade. The transactions were done openly and with notice to Ralfs that Mowrys intended to exercise their renewal options. The lease terms, while arguably favorable to Mowrys, were by no means out of line. II. We concur in the court of appeals' analysis regarding the balance due on the mortgage. We vacate the court of appeals' judgment and affirm the district court judgment with some modification of the accounting.

No. 97-1713. STATE v. WATTS.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Larson, J. (5 pages \$2.00)

The defendant appeals from a restitution order following her guilty plea to two counts of second-degree theft. The victim's loss prevention officer calculated restitution by using the videotape, depicting Watts carrying arms-full of clothes from the store, and inventory lists. The court ordered restitution of \$27,871.15, which was seventy-five percent of the value established by the loss prevention officer. Watts appeals. She argues the amount she admitted to by her guilty plea was only \$10,000, and any amount above that would be speculative. She also argues the court did not consider that someone else took some of the items or that employees incorrectly entered the data in the computer system, and the victim should have been required to introduce evidence as to the "profit margin" on the items. **OPINION HOLDS:** The court's reduction of twenty-five percent in the store's valuation might be considered arbitrary, but a fact finder's method of calculating damages usually inheres in the award itself and is not subject to challenge if the end amount is within the reasonable range of the evidence. The restitution amount set by the court has a reasonable basis in the evidence and is neither speculative nor imaginary.

No. 96-2280. BARBERTON RESCUE MISSION, INC. v. IOWA DEP'T OF COMMERCE.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II, Judge. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Larson, J. (9 pages \$3.60)

Barberton Rescue Mission, a nonprofit religious corporation, distributes a publication through which medical costs are spread among its subscribers. Under the basic newsletter program, claims are subject to a \$200 deductible floor and certain exclusions. Subscribers seeking financial assistance submit their medical bills to the newsletter. If the newsletter staff determines the expenses qualify for assistance, the newsletter publishes the name and address of the claimant and assigns enough other subscribers to cover the claimant's medical expenses. Once

No. 96-2280. BARBERTON RESCUE MISSION, INC. v. IOWA DEP'T OF COMMERCE. (continued)

a year, subscribers make their monthly payments directly to the newsletter to pay administrative costs. The insurance division of the department of commerce charged Barberton with selling insurance without a license. The insurance division, in its final decision, ruled that Barberton was selling insurance, was subject to supervision, and must pay the premium tax under Iowa Code section 507A.9 (1997). On judicial review, the district court ruled the newsletter plan was not insurance and that Iowa Code section 505.22 exempts the newsletter from insurance regulation. The insurance division appeals. **OPINION HOLDS:** Even under a view of the evidence most favorable to the insurance division, it has failed to establish the key element of insurance, the assumption of risk by the newsletter under its loss-spreading plan with its subscribers. We conclude as a matter of law that this plan is not insurance, and the legislature did not intend to cover such plans in chapter 507A. We affirm the district court's ruling.

No. 97-1622. STATE v. JONES.

Appeal from the Iowa District Court for Worth County, Jon Stuart Scoles and Stephen P. Carroll, Judges. **AFFIRMED.** Considered by McGiverin, C.J., and Harris, Larson, Neuman, and Ternus, JJ. Opinion by Larson, J.
(7 pages \$2.80)

A police officer observed a Blazer and a red car parked in an alley and requested information from the police dispatcher, who reported that the Blazer was owned by a male whose license was under suspension. Two women and a man approached the vehicles. The women, one of whom the officer recognized as the owner of the red car, drove away in the Blazer. The male drove the red car. After stopping both vehicles, the officer discovered the male was not the subject of his initial interest, but rather, the defendant, Jones, who also had a suspended license. Jones was charged with driving while barred and three counts of driving while suspended, denied, or revoked. Following his guilty pleas, the court granted his motion in arrest of judgment. Jones then filed a motion to suppress, which was denied as being beyond forty days following his arraignment. On appeal Jones contends that (1) the forty-day period for filing the motion under Iowa Rule of Criminal Procedure 10(4) should begin anew with the order granting the motion in arrest of judgment, and (2) the officer conducted an illegal *Terry* stop. **OPINION HOLDS:** I. We conclude that a defendant in Jones' position must file a motion to suppress prior to trial but in no event later than forty days after the order granting the motion in arrest of judgment. II. The officer was entitled to act on his reasonable belief that the lone man in the group was the one who was wanted for driving violations and that he was the driver of one of the vehicles. The stop was reasonable under *Terry*.

No. 97-1420. STATE v. CHANG.

Appeal from the Iowa District Court for Black Hawk County, L.D. Lybbert, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Carter, J. (7 pages \$2.80)

Defendant attempted to elude police after he was observed driving his vehicle while his license was suspended. He was eventually cornered. As an officer entered his vehicle, defendant accelerated, ramming his Jeep into a police car and causing the officer to strike the dashboard, injuring his knee. Defendant was convicted of second-degree criminal mischief and assault of a police officer causing bodily injury. Defendant appeals. **OPINION HOLDS:** I.A. We agree with the defendant that the marshaling instruction submitted to the jury with respect to the second-degree criminal-mischief charge was erroneous. The instruction only required the State to establish the defendant intended to do the act that damaged the property. It should have required the State to establish that the defendant intended to cause the damage. Defendant's conviction for second-degree criminal mischief is reversed, and the charge is remanded to the district court for retrial. B. We reject defendant's argument that the evidence was not sufficient to sustain a conviction of second-degree criminal mischief, entitling him to a directed verdict. A reasonable jury could have concluded that he deliberately rammed the officer's vehicle and intended the natural consequences of that action. II. We find substantial evidence existed to support defendant's conviction of assault on a peace officer. We affirm this conviction.

No. 97-316. DAVE OSTREM IMPORTS, INC. v. GLOBE AM. CAS.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Carter, J. (7 pages \$2.80)

A vehicle owned by Dave Ostrem Imports, Inc. was struck by a vehicle owned by David Morse and driven with Morse's consent by Cari Knock. At the time of the accident, Knock had a policy of liability insurance issued by Globe American Casualty/GRE Insurance Group (Globe) and certified by Globe as proof of Knock's financial responsibility pursuant to Iowa Code section 321A.18(1) (1995). The policy included a provision requiring the insured to notify Globe of any accident triggering coverage and to promptly forward to it any suit papers that the insured might receive. The policy provided that a failure to do this would be a basis for denying coverage. Ostrem commenced an action against Knock and Morse to recover for damage to its motor vehicle. Although both defendants were properly served, neither appeared and default judgment was entered against them. Ostrem was unable to satisfy the judgment and brought the present direct-action claim against Globe pursuant to Iowa Code section 516.1. Globe asserted as an affirmative defense that Knock's coverage was voided as a result of her failure to give it notice of Ostrem's legal action. Ostrem subsequently moved for summary judgment, asserting that Globe was absolutely liable as a certifier of financial responsibility. The district court granted Ostrem's motion and entered a judgment against Globe for the policy limits. Globe appealed. **OPINION HOLDS:** I. The clearly expressed purpose of the absolute liability provision of section 321A.21(6) is to prevent lessening of the protection to the motoring

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(continued)

public that financial responsibility laws are intended to provide. Therefore, Globe was precluded from raising its policy defenses. II. Because the preclusion of policy defenses required by section 321A.21(6)(a) is part of the contract that Globe freely entered into, there is no denial of due process in applying, as written, such statutory requirements for insurance policies of which the insurer should have been aware. Even if we were to conclude that Globe's ultimate responsibility for any judgment entered against Knock would give Globe a due process right to be heard concerning the extent of Knock's liability, we are convinced that this right, if it exists, must be asserted as a challenge to the conclusive effect of the default judgment rather than as a basis for voiding the statutory preclusion against policy defenses.

No. 97-1143. STATE v. CASEY'S GENERAL STORES, INC.

Appeal from the Iowa District Court for Mahaska County, Michael R. Stewart, District Associate Judge, and Annette J. Scieszinski, Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (11 pages \$4.40)

Casey's General Stores, Inc. and Hy-Vee, Inc. were convicted of selling alcoholic beverages to an underage person in violation of Iowa Code sections 123.47 and 123.49(2)(h) (1995) after their employees sold alcoholic beverages to underage customers during a "sting" operation by the local police. Their convictions were affirmed by the district court. We then granted discretionary review. **OPINION HOLDS:** There is insufficient evidence to support a finding that the corporations violated sections 123.47 and 123.49(2)(h). There is no evidence either defendant knew the purchaser was underage or otherwise failed to exercise reasonable care to ascertain the purchaser's age. Additionally, neither statute at issue imposes vicarious liability. Moreover, the factual prerequisites for the corporations' vicarious liability under Iowa Code section 703.5 are not satisfied. We therefore reverse the convictions and remand for dismissal of the charges.

No. 97-2081. CONKLIN v. CONKLIN.

Appeal from the Iowa District Court for Muscatine County, Edward B. deSilva, Jr., Judge. **REVERSED AND REMANDED.** Considered by McGiverin, C.J., and Larson, Carter, Snell, and Ternus, JJ. Opinion by Ternus, J. (7 pages \$2.80)

Angel Conklin filed a petition for relief from domestic abuse, alleging her husband, Michael Conklin, had physically abused her and had threatened her life and that of their son. The court issued a temporary protective order and scheduled a hearing to consider a permanent order. The day before the scheduled hearing, Michael filed a petition for dissolution of marriage. After the parties presented evidence at the domestic abuse hearing, Michael's attorney informed the court of the dissolution action. The court filed an order that bore the caption

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and case numbers for both cases. It dismissed Angel's petition and entered an injunction in the dissolution case prohibiting contact between the parties. Angel filed a motion to enlarge, requesting the court include a no-contact order in the domestic abuse case. She pointed out that a mutual protective order is specifically prohibited by Iowa Code section 236.20 (1997) unless both parties request such relief. The court denied Angel's motion, and she appeals. **OPINION HOLDS:** I. A request to make specific findings of fact and conclusions of law was inherent in Angel's request that the court enter a protective order and we will consider the merits of Angel's claim. II. Michael's filing of a dissolution action did not dispense with the necessity for the court to make factual findings and conclusions of law. III. The trial court failed to make the findings of fact and conclusions of law required by Iowa Rule of Civil Procedure 179(a). We reverse the trial court's order and remand for a ruling that complies with rule 179(a). IV. Mutual protective orders are prohibited in domestic abuse cases where the defendant has neither requested nor established his entitlement to such relief. We are unable to reverse that portion of the court's order, however, because the mutual protective order was entered in the dissolution case, and that case is not before us in this appeal. Any relief to which Angel might be entitled with respect to the mutual no-contact order must await an appeal of the dissolution action.

No. 96-1778. AMERICAN SOIL PROCESSING, INC. v. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. Dissent by Carter, J. (22 pages \$8.80)

The Iowa Comprehensive Petroleum Underground Storage Tank Board agreed to provide American Soil Processing, Inc., (ASPI) with a yearly minimum amount of contaminated soil under a soil remediation contract. The contract included a liquidated damages clause if the board fell short in providing the minimum amount of soil. The contract also included a *force majeure* clause excusing the board's failure to perform caused by events beyond the board's reasonable control. The board fell short on providing the minimum amounts required by the contract but refused to pay liquidated damages claiming the *force majeure* clause excused its performance because governmental environmental regulations prevented it from supplying the minimum amounts. ASPI sued for the liquidated damages. Both the board and ASPI moved for summary judgment. The court granted ASPI summary judgment. It concluded that the payment of liquidated damages was an alternative performance not excused by the *force majeure* clause. We granted the board's application for interlocutory appeal. **OPINION HOLDS:** The contract does not provide for alternative performance. The board has no real choice under the agreement because the alternative of paying for nonprocessed soil is not equally advantageous as paying for soil that was remediated. Furthermore, construction of the contract as providing for alternative performance renders the *force majeure* provision a nullity. As a matter of law the agreement is a contract to provide a minimum amount of contaminated

No. 96-1778. **AMERICAN SOIL PROCESSING, INC. v. IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND BD.** (continued)

soil per year with a liquidated damages provision in the event of the board's unexcused nonperformance. The district court erred in concluding otherwise, and we reverse and remand. On remand, the district court shall enter a ruling sustaining the board's summary judgment motion. Because genuine issues of material fact exist on the board's *force majeure* defense, the district court shall conduct further proceedings on that issue. **DISSENT ASSERTS:** The contract made it clear that the liquidated damages were not to be paid for a willful breach but were to be insurance against a failure to perform for reasons beyond the board's control. Because the *force majeure* clause is a general boilerplate provision and the liquidated-damage clause is a special provision dealing with the inability of the board to perform the agreement, the liquidated-damage clause should be given effect as written. I would affirm the district court judgment.

No. 97-350. **BENNETT v. MC #619, INC.**

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey, Judge. **AFFIRMED ON APPEAL AND CROSS-APPEAL; REMANDED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Lavorato, J. (20 pages \$8.00)

Todd Bennett filed suit against the defendants, MC #619, Inc. (MC) and CRW #644, Inc. (CRW), claiming they were liable as successor corporations for an unpaid judgment on his employment discrimination claim. The district court granted MC's motion for summary judgment but denied CRW's motion for summary judgment. Both motions asserted Bennett's claim was barred under the doctrine of *res judicata*. The court also denied Bennett's motion for summary judgment against both defendants. Bennett appeals from the district court order granting MC's motion for summary judgment and denying his own motion for summary judgment against MC. CRW cross-appeals from the district court order denying its motion for summary judgment. **OPINION HOLDS:** I. Appeal. To prove successor liability in the context of a civil rights case, the complainant must prove that (1) the successor had notice of the existing charge of discrimination, (2) the predecessor is presently unable to provide relief, and (3) substantial continuity exists between the operations of the predecessor and the successor. Our review of the record satisfies us that all of the elements of adjudicatory procedure were available in the proceeding before the commission to determine the issue of successor liability, and more specifically, the financial inability to pay element. In other words, the commission was deciding issues through a procedure substantially similar to those employed by courts and was thus engaged in adjudication. For this reason, the decision the commission reached on successor liability was conclusive and binding on Bennett under the principles of *res judicata*. Moreover, because Bennett did not seek judicial review and the commission neither explicitly nor implicitly retained jurisdiction to later determine damages, its decision became final. A. As to his contention that "present inability" to pay damages is a precondition to suit, Bennett places heavy emphasis on the word "present." When we used the word "presently" in a prior

No. 97-350. BENNETT v. MC #619, INC. (continued)

case, we were using it in the sense that the complainant must prove the predecessor's inability to provide the relief awarded *at the time of the hearing*. We were not using it in the sense that it was a temporal precondition that the complainant could establish later. Moreover, we have found no case authority in discrimination cases suggesting that complainants can prove the inability element in a piecemeal fashion as Bennett urges. **B.** We also reject Bennett's contention that the present claim for successor liability is a separate one, based upon separate facts, from the successor liability claim the commission decided. The claim before the district court was no different from the claim before the commission. For that reason, Bennett's contention that the present claim for successor liability is a separate claim must fail. **II. Cross Appeal.** Contrary to CRW's contentions, we conclude that there are genuine issues of material fact on all three elements of the successor liability theory. **A.** We reject CRW's argument regarding the successor's notice of an existing charge of discrimination. Contrary to CRW's contention, we think a factfinder could reasonably infer from this evidence that a close relationship existed among Family Restaurants, Inc., the owners and officers of Family Restaurants, Inc., and the owner of CRW. From this close relationship a factfinder also could reasonably infer that CRW through its sole officer and shareholder had notice of Bennett's civil rights complaint. We therefore conclude a genuine issue of material fact exists on the element of notice. **B.** It is undisputed that Bennett did not have the opportunity to litigate against CRW the issue of Family Restaurants, Inc.'s inability to pay the damages awarded him. This is because CRW did not take over the operation of the Cedar Rapids West Bonanza Family Restaurant until after the commission's decision. From this, we conclude a genuine issue of material fact exists on the element of Family Restaurants, Inc.'s inability to provide relief. **C.** We further conclude there is a genuine issue of material fact on the substantial continuity of business element. Accordingly, we affirm on both the appeal and cross-appeal. We remand for further proceedings.

No. 97-2008. STATE v. SAILER.

Appeal from the Iowa District Court for Clinton County, James E. Kelley, Judge. **AFFIRMED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Snell, J. (16 pages \$6.40)

James Sailer pled guilty to third-degree theft. Sailer appeals claiming that the district court erred in overruling his objection to certain portions of a victim impact statement introduced at the sentencing hearing and improperly considered unproven offenses disclosed in that statement when setting his sentence. **OPINION HOLDS:** I. Sailer contends that Iowa Code section 910A.5 (Supp. 1995) limits the scope of the victim impact statement to a discussion of only the offense of which the defendant has been found guilty or to which he pleaded guilty. Based on the consequences which would arise from a narrow interpretation of the word "offense," the legislative intent of section 910A.5, and the goal of giving a reasonable construction to the statute, we conclude that the word "offense" should be interpreted broadly. Limitations on the content of victim impact statements should be left to the discretion of the sentencing court. Here, the court properly admitted the victim's testimony regarding incidents

No. 97-2008. STATE v. SAILER. (continued)

which were part of the same pattern of conduct from which the theft charge arose. II. We reject Sailer's claim that the district court improperly considered unproven thefts detailed by the victim in determining his sentence because the court stated it considered the amount of the victim's financial loss. We construe the challenged statement to be merely a reference to consideration of the victim impact statement in general as required by section 901.5. We affirm.

No. 97-01. IN RE MARRIAGE OF EKLOFE.

Appeal from the Iowa District Court for Wapello County, Daniel Wilson, Judge. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.** Considered by Carter, P.J., and Lavorato, Neuman, Snell, and Cady, JJ. Opinion by Cady, J. (13 pages \$5.20)

Robert and Patricia Eklofe's marriage was dissolved in 1985. Robert was ordered to pay weekly alimony until Patricia died or remarried, and monthly child support. In 1987, the child support order expired. In 1994, Patricia filed an action to collect past-due alimony and enforce Robert's alimony obligation through mandatory income withholding. We ultimately ruled Patricia could not enforce payment of the alimony in this manner because the accompanying child support order had expired. Patricia then sought to collect delinquent alimony by garnishing Robert's wages. The district court ruled the annual statutory limitation on wage garnishment did not apply to court-ordered alimony. It concluded sixty percent of Robert's net earnings were subject to garnishment. Robert appealed. **OPINION HOLDS:** I. The district court correctly concluded the less restrictive caps on wage garnishment under 15 U.S.C. § 1673(b)(2) (1994) are applicable to this case. II. We conclude that under the facts of the present case the statutory garnishment scheme does not except the collection of court-ordered alimony from the annual restrictions under Iowa Code section 642.21 (1995). We do not decide at this time whether recent amendments to the statutory exemptions from section 642.21 would apply in future actions. We affirm the district court insofar as it applied the federal pay period restrictions. We reverse that portion of the district court order which exempted the garnishment claim from the annual restrictions of section 642.21, and remand for entry of an order limiting garnishment to the maximum amount of Robert's calendar year earnings.

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